6381

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 108.

JAMES BRISTOL, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF SOPHIA M. BRISTOL, DECEASED, PLAINTIFF IN ERROR,

vs.

WASHINGTON COUNTY, STATE OF MINNESOTA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED AUGUST 12, 1895.

(16,940.)

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1 UNITED STATES OF AMERICA:

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

In re Claim of Washington County, Minnesota.

Pleas before the honorable the judges of the circuit court of the United States of America for the district of Minnesota, third division, of the June term, 1896, of said court, held in the city of St. Paul, in said district, in the year of our Lord one thousand ninety-six, 1896.

DISTRICT OF MINNESOTA, *ss*:

Be it remembered that on the 23rd day of May, A. D. 1895, the following transcript of record from the probate court of Ramsey county, State of Minnesota, was filed of record in said court, to wit:

2 To the probate court of the county of Ramsey, State of Minnesota:

The petition of James Bristol, of Gainesville, in the county of Wyoming and State of New York, respectfully represents that Sophia M. Bristol, late of the town of Gainesville, county of Wyoming, in the State of New York, lately died testate in said Wyoming county, in the said State of New York; that James Bristol was by the last will and testament of said deceased named and appointed as executor of said will.

That the said last will and testament of said deceased was on the 27th day of August, 1894, duly admitted to probate in and by the surrogate's court of Wyoming county, State of New York, and letters testamentary thereon duly issued to said James Bristol, executor aforesaid.

That the said deceased died possessed of certain personal property situated in the said county of Ramsey, the value whereof does not exceed the sum of $5,000.00, and also real estate in Washington, Chisago, and Isanti counties, in the State of Minnesota, on which the said will may operate.

That your petitioner herewith presents a duly authenticated copy of said will, and the probate thereof, and of letters testamentary issued thereon by the surrogate's court of the county of Wyoming, State of New York, and requests that the said will may be allowed by and admitted to probate in this court, and letters testamentary issued thereon to said James Bristol, as executor, in accordance with the statutes in such case made and provided.

The names and residence- of all persons interested in the estate of said deceased, either as legatee-, heirs-at-law, or next of kin of said deceased, are as follows, viz:

Names.	Residence-.
James Bristol, aged 57, husband & legatee.....	Gainesville, Wyoming Co., New York.
Charles E. Bristol, aged 31 years, son & legatee.....	Gainesville, Wyoming Co., New York.
James E. Bristol, aged 13 years, son and legatee....	Gainesville, Wyoming Co., New York.
Rufus C. Jefferson, conditional legatee	St. Paul, Ramsey Co., *New York.*

3 Dated this 24th day of September, A. D. 1894.

JAMES BRISTOL.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

James Bristol, the above petitioner, being duly sworn, doth depose and say that the foregoing petition is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JAMES BRISTOL.

Subscribed and sworn to before me this 24th day of September, 1894.

EMERSON HADLEY,

[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minn.*

(Endorsed:) Petition to admit foreign will to probate. Filed this 25th day of September, 1894. Frank Robert, Jr., clerk of probate.

4 At a surrogate's court held at the surrogate's office, in the village of Warsaw, in and for the county of Wyoming, on the 27th day of August, 1894.

Present: Andrew J. Lorish, surrogate.

In the Matter of Proving the Last Will and Testament of SOPHIA M. BRISTOL, Deceased.

Satisfactory proof by affidavit having been made and filed of the due service of the citation heretofore issued in this matter, duly requiring the husband, heirs-at-law, next of kin, and all persons in being who take an interest in any portion of the real or personal property of said deceased under the provisions of the said last will and testament, and the executor and trustee named therein, to appear in this court on the 27th day of August, 1894, at 10 o'clock in the forenoon, to attend the proof and probate of the last will and testament of Sophia M. Bristol, late of the town of Gainesville, in the county of Wyoming and State of New York, deceased, bearing date the 4th day of April, 1888; and James B. Bristol, the executor in said will, the petitioner herein, having appeared in person and by Byron Healy, his attorney, in support of the proof of the same, and George W. Bottsford, the special guardian duly appointed of James C. Bristol, an infant, heir-at-law, and next of kin of said

deceased, having appeared for said infant, heir-at-law, and next of kin of said deceased, *having appeared for said infant*, and no other persons or parties having appeared herein, and witnesses having been examined and proofs taken, and the said surrogate having heard the proofs and allegations of the parties and mature deliberation being had thereon, and the surrogate having inquired particularly into all the facts and circumstances and being satisfied
5 of the genuineness of said will and the validity of its execution, and the probate of said will not having been contested—

It is adjudged and decreed that said instrument in writing, purporting to be the last will and testament of the said Sophia M. Bristol, deceased, was duly and properly executed; that the same is genuine and valid, and that the said Sophia M. Bristol, deceased, at the time of executing the same was in all respects competent to make a last will and testament and to devise real estate and was not under any restraint or undue influence; and this court doth further order and decree that the said last will and testament and the proofs and examinations taken in respect to the same be recorded, and that the said instrument be admitted to probate, and that the same be, and hereby is, established as a will valid to pass real and personal estate, and the said proofs to be sufficient; which said last will and testament and the proofs taken thereupon are as follows—that is to say:

I, Sophia M. Bristol, of the town of Gainesville, in the county of Wyoming and State of New York, do make, publish and declare this my last will and testament, in manner following, that is to say:

1st. I give, devise and bequeath to my husband, James Bristol, one-tenth part of all my property, both real and personal.

2nd. All the rest, residue and remainder of my property, both real and personal, I give, devise and bequeath to the said James Bristol in trust and order and direct the said James Bristol as such trustee, to sell, convey or exchange, manage, control, invest and reinvest one-half part of such remainder, real and personal, or the proceeds thereof at the best rates and in the best manner and to the best advantage that he can and apply the use, income, rents and profits thereof, or so much thereof as he may deem necessary or proper under the circumstances, for the care, support, education, maintenance and comfort of my son Charles E. Bristol until he shall arrive at the age of thirty years, and when the said Charles E. Bristol shall arrive at the age of thirty years, I order and
6 direct my aforesaid trustee to put, use and keep the said one-half of said remainder in such property and in such manner as my said trustee shall think will produce the greatest income, interest, rents and profits, and pay over to the said Charles E. Bristol, annually all of such income, interest, rents and profits until the same shall be transferred and conveyed to him as hereinafter provided, or until his death; but in case my said trustee shall at any time after the said Charles E. Bristol becomes thirty years of age deem it better for the interest and welfare of the said Charles

E. Bristol to have the said one-half part of said remainder and all remaining income transferred and conveyed to the said Charles E. Bristol, then and in that case the said trustee may and shall transfer and convey all of the one-half of said remainder, and remaining income thereof to the said Charles E. Bristol, absolutely and forever.

I order and direct the said James Bristol as such trustee to sell, convey or exchange, manage, control, invest and reinvest the other half part thereof, at the best rates and in the best manner and to the advantage that he can, and apply the use, income, rents and profits thereof, or so much thereof as he may deem necessary or proper under the circumstances, for the care, support, education, maintenance and comfort of my son James C. Bristol, until he shall arrive at the age of thirty years, and when the said James C. Bristol shall arrive at the age of thirty years, I order and direct my aforesaid trustee to put, use and keep the said other one-half of said remainder in such property and in such manner as my said trustee shall think will produce the greatest income, interest, rents and profits, and pay over to the said James C. Bristol, annually, all of such income, interest, rents and profits until the same shall be transferred and conveyed to him as hereinafter provided or until his death, but in case my said trustee shall at any time after the said James C. Bristol becomes thirty years of age deem it better for the interest and welfare of the said James C. Bristol to have the
7 said other one-half part of said remainder and all remaining income thereof transferred and conveyed to the said James C. Bristol, then and in that case the said trustee may and shall transfer and convey all of the said other one-half of said remainder and remaining income thereof to the said James C. Bristol, absolutely and forever.

If either of my said sons shall die before his share of or interest in my property real and personal, shall be conveyed to him by said trustee as herein provided, without leaving any descendant or descendants, all of the interest and share in my estate hereinbefore devised, bequeathed and given to the one so dying shall immediately vest in my trustee herein appointed, and my said trustee shall thereupon hold, manage, sell, convey, exchange, invest and reinvest the same, or the proceeds thereof, to the best advantage he can for the survivor of my said two sons and my said estate; the same in all respects and under the same trusts and powers which my said trustees holds and may exercise with reference to the other half of the said trust estate, real and personal. But if my said sons, or either of them shall die leaving a descendant or descendants before his share shall be conveyed to him by the said trustee as herein provided, then the share or shares of the one, or ones so dying shall immediately, upon the death of the other one or ones so dying, vest in the children or descendants of the one or ones so dying.

3rd. I hereby authorize and empower my said trustee to contract, sell or convey any or all my real estate wherever the same may be situated, and I authorize and empower my said trustee to sell, ex-

change or convey any or all my real estate and personal property in order to comply with and fulfill the trusts herein contained, and I authorize and empower him to invest, purchase, exchange, or sell and convey my property real and personal, which he may deem to the advantage of my said children during the continuance of said trusts; and I authorize and empower my said trustee during the continuance of said trusts to loan any money or moneys upon such legal terms and securities or mortgages as he shall deem best for the interests of my said sons, respectively, and estate, in any
8 State of the United States, and to loan, invest, sell, exchange any property, real or personal, in any State of the United States, and to do all things which he deems necessary for the proper and faithful execution of said trusts wheresoever my said trustee shall deem best for the interests of my said sons, during the continuance of the said trusts.

4th. If my said trustee shall die or become legally incapable of acting as such trustee as in this will appointed and situated, I do hereby constitute and appoint such person or persons as trustee or trustees under this will in the place and stead of James Bristol, as my said trustee, the said James Bristol, shall by his duly executed last will and testament, constitute and appoint as trustee or trustees, to execute the trusts and powers herein granted to, and vested in my said trustee, James Bristol; and I hereby authorize and empower the said James Bristol to constitute and appoint by his last will and testament such person or persons as he shall deem fit and proper to be trustee or trustees in his place and stead, to act as such trustee or trustees in case the said James Bristol shall die, or become legally incompetent or incapacitated to act as such trustee.

And fourthly, I hereby constitute and appoint my husband, the said James Bristol, sole executor of this my last will and testament hereby revoking all former wills by me made.

If both of my said sons shall die neither of them leaving any descendants before my said trustee shall convey the trust property to them respectively as herein provided, then and in such case upon their death, or the death of the survivor of them, the said trust estate and property shall immediately vest in and become the property of my brother Rufus C. Jefferson, or his heirs absolutely and forever.

In witness whereof, I have hereunto set my hand and seal this 4th day of April in the year of our Lord one thousand eight hundred and eighty-eight.

SOPHIA M. BRISTOL. [SEAL.]

9 The above-written instrument was at the date thereof signed, sealed, published, and declared by the said Sophia M. Bristol, the testatrix therein named, as and for her last will and testament, in presence of us, who, at her request and in her presence and in the presence of each other, have subscribed our names as witnesses thereto.

CHAS. W. BAILEY,
Warsaw, N. Y.
CHARLES J. GARDNER,
Warsaw, N. Y.

10 Surrogate's Court, Wyoming County.

In the Matter of Proving the Last Will and Testament of SOPHIA M. BRISTOL, Deceased.

WYOMING COUNTY, *ss:*

Charles W. Bailey and Charles J. Gardner, being first duly sworn in open court, upon their several corporal oaths each doth depose and say that they are subscribing witnesses to the last will and testament of Sophia M. Bristol, late of the town of Gainesville, in the county of Wyoming and State of New York, deceased; and these deponents do further say that the said Sophia M. Bristol, deceased, did, in the presence of each of these deponents, subscribe her name at the end of the instrument in writing which is now here shown to these deponents and which purports to be the last will and testament of the said deceased and which bears date on the 4th day of April, one thousand eight hundred and eighty-eight.

The said deceased did at the time of subscribing her name to the said instrument as aforesaid declare the same to be her last will and testament; and these deponents did thereupon subscribed and sign their own respective names at the end of said instrument as attesting witnesses to the execution thereof, each at the request of the said deceased and in her presence and in the presence of each other; that the said deceased at the time of so subscribing her name to said instrument as aforesaid and publishing said instrument as aforesaid was upward of twenty-one years of age and a citizen of the United States; that she appeared to be, and deponents believe she was, of sound mind, memory, and understanding and not under any restraint and, as deponent- verily believe, in all respects competent to devise real estate; that each of these deponents saw the other so subscribe and sign said instrument as such witness thereto in the presence of the said deceased.

CHARLES J. GARDNER.
CHAS. W. BAILEY.

Subscribed and sworn to before me this 27th day of August, 1894.

ANDREW J. LORISH, *Surrogate.*

In testimony whereof I have hereunto set my hand this 27th day of August, 1894.

ANDREW J. LORISH, *Surrogate.*

11 The People of the State of New York to all to whom these presents shall come or whom they may concern, send greeting:

Know ye that at the county of Wyoming, on the 27th day of August, in the year of our Lord one thousand eight hundred and ninety-four, in the surrogate's court of our said county, a decree was duly made whereby the last will and testament of Sophia M.

Bristol, deceased, was duly proved and admitted to probate and is now approved and allowed by us; and the said Sophia M. Bristol having been at the time of her death a resident of the county of Wyoming, by means whereof the proving of the said will and the granting of administration of all and singular the goods, chattels, and credits of the said testator, and also the auditing, allowing, and judicially settling the account thereof, doth belong to us, the administration of all and singular the goods, chattels, and credits of said deceased in any way concerning her will is granted unto James Bristol, the executor in the said will named, he being first duly sworn well, faithfully, and honestly to discharge the duties of such executor.

Witness Hon. Andrew J. Lorish, surrogate of said county of Wyoming, and the seal of the surrogate's court of said county, the 27th day of August, in the year of our Lord one thousand eight hundred and ninety-four.

[L. S.] ANDREW J. LORISH, *Surrogate.*

12 STATE OF NEW YORK, *Wyoming County,* } ss:

SURROGATE'S OFFICE.

I, Homer O. Holly, clerk of the surrogate's court in and for said county — Wyoming, do hereby certify that I have compared the foregoing copy of the record of the last will and testament of Sophia M. Bristol, deceased, and the proceedings admitting the same to probate and the letters testamentary issued thereon with the original record thereof now remaining in this office and have found the same to be a correct transcript therefrom and of the whole of such original record, and that said probate of said will and said letters testamentary have not been revoked.

In testimony whereof I have hereunto set my — and affixed the seal of office of the surrogate's court of said county this 11th day of September, in the year of our Lord one thousand eight hundred and ninety-four.

HOMER O. HOLLY,

[L. S.] *Clerk of the Surrogate's Court in and for the County of Wyoming, in the State of New York.*

STATE OF NEW YORK, *Wyoming County,* } ss:

SURROGATE'S OFFICE.

I, Andrew J. Lorish, surrogate of said county of Wyoming and presiding magistrate of the surrogate's court in and for said county of Wyoming, do hereby certify that the foregoing exemplification of the record of the last will and testament of Sophia M. Bristol, deceased, and the proceedings admitting the same to probate and the letters testamentary issued thereon *is* authenticated in due form.

In testimony whereof I have hereunto set my hand and affixed

the seal of the surrogate's court of said county this 11th day
13 of September, in the year of our Lord one thousand eight hundred and ninety-four.

[L. S.] ANDREW J. LORISH, *Surrogate.*

(Endorsed:) Authenticated copy of last will and testament of Sophia M. Bristol, deceased. Filed Sept. 25, 1894. Frank Robert, Jr., clerk.

14 STATE OF MINNESOTA, *County of Ramsey,* } ss:

In Probate Court, Special Term, Held October 19, 1894.

In the Matter of the Last Will and Testament and of the Estate of SOPHIA M. BRISTOL, Deceased.

Be it remembered that on the 19th day of October, 1894, pursuant to notice duly given and to the statute in such case made and provided, at the probate office in said county, before me, Hon. John B. Olivier, judge of the probate court of said county, the foregoing and annexed authenticated copy of the last will and testament of Sophia M. Bristol, late of Wyoming county, in the State of New York, deceased, having been duly proved and allowed by the surrogate's court of Wyoming county, in said State of New York, and the said testator having left real estate in said county of Ramsey, State of Minnesota, on which said will may operate, was on said date filed, allowed, recorded, and admitted to probate as and for the last will and testament of said deceased.

In testimony whereof I have hereunto set my hand and affixed the seal of the probate court of Ramsey county, at Saint Paul, in said county, this 19th day of October, 1894.

JOHN B. OLIVIER,

[L. S.] *Judge of Probate.*

(Endorsed:) Recorded in Book 10, pages 256 to 264. Received Sept. 25, 1894. Filed, allowed, and recorded this 19th day of Oct., 1894. Frank Robert, Jr., cl'k of probate.

15 *Order for Hearing.*

STATE OF MINNESOTA, *County of Ramsey,* } ss:

Probate Court.

In the Matter of Proving the Alleged Last Will and Testament of SOPHIA M. BRISTOL, Deceased.

Whereas James Bristol, of the town of Gainesville, county of Wyoming and State of New York, has delivered to the probate court of the county of Ramsey an instrument in writing purporting to be a duly certified copy of the last will and testament of Sophia M. Bristol, late of Gainesville, Wyoming county, New York,

deceased, and filed therewith his petition to said probate court praying that the said instrument be proved and admitted to probate, and that letters testamentary be granted thereon to him as executor:

It is ordered that said petition be heard and the proofs of said alleged will be taken at a special term of this court, to be held at the court-house, in the city of St. Paul, in said county, on Friday, the 19th day of October, 1894, at 10 o'clock in the forenoon, when all persons interested may appear for or contest the probate of it, and that notice of such hearing be given to all persons interested by publishing this order once in each week for three successive weeks prior to said day of hearing in the St. Paul Weekly Pioneer Press, a weekly newspaper printed and published in said county.

Dated Saint Paul this 25th day of September, 1894.

JOHN B. OLIVIER,
Judge of Probate.

[L. S.]

(Endorsed:) Recorded in Docket 39, on page 146. Filed this 25th day of September, 1894. Frank Robert, Jr., clerk of probate court.

16 *Affidavit of Publication.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

W. L. Driscoll, being duly sworn, deposes and says that the annexed printed copy of notice of est. of Bristol was taken from the Weekly Pioneer Press, a weekly newspaper, which during the whole time of the publication of said notice, hereinafter stated, has been and is printed and published in the English language, in the city of St. Paul, Ramsey county and State of Minnesota, and published and generally circulated in said county for more than one year next preceding the date of the first publication, hereinafter named, and during all said times was a newspaper as defined in section 1, chapter 33, of the General Laws of Minnesota for 1893, and that the publishers of the said paper have filed with the county auditor of said Ramsey county an affidavit in all respects complying with the requirements of section 2 of chapter 33 of the General Laws of 1893; that the said notice was duly printed and published in said newspaper, in the English language, once in each week for the period of three successive weeks, on Thursday of each week, *for the period of three successive weeks, on Thursday of each week*, commencing on the 27th day of September, 1894, on which day last mentioned it was first published, and then of the 4th day of October, and ending on the 11th day of October, 1894, on which day last mentioned it was last published; upon which days and times of publication aforesaid the said newspaper was regularly printed and published, and that during the whole time of the said publication he was one of the printers and publishers of the said newspaper.

W. J. DRISCOLL.

Subscribed and sworn to before me this 11th day of October, A. D. 1894.

G. E. SAMPSON,
Notary Public, Ramsey County, Minn.

[NOTARIAL SEAL.]

Printers' fee, $5.28.

17 STATE OF MINNESOTA, } ss.:
County of Ramsey, }

Probate Court.

In the Matter of Proving the Alleged Will and Testament of SOPHIA M. BRISTOL, Deceased.

Whereas James Bristol, of the town of Gainesville, county of Wyoming, and State of New York, has delivered to the probate court of the county of Ramsey an instrument in writing purporting to be a duly certified copy of the last will and testament of Sophia M. Bristol, late of Gainesville, Wyoming county, New York, deceased, and filed therewith his petition to said probate court, praying that the said instrument may be proved and admitted to probate, and that letters testamentary be granted thereon to him as executor:

It is ordered that said petition be heard and the proofs of said alleged will be taken at a special term of this court, to be held at the court-house, in the city of St. Paul, in said county, on Friday, the 19th day of October, 1894, at 10 o'clock in the forenoon, when all persons interested may appear for or contest the probate of it, and that notice of such hearing be given to all persons interested by publishing this order once in each week for three successive weeks prior to said day of hearing in the St. Paul Weekly Pioneer Press, a weekly newspaper printed and published in said county.

Dated at Saint Paul this 25th day of September, 1894.

JOHN B. OLIVIER,
Judge of Probate.

[SEAL.]

BUNN & HADLEY, *Att'ys.*

(Endorsed:) Affidavit of publication of order for hearing petition. Filed October 19, 1894. Frank Robert, Jr., clerk.

18 STATE OF MINNESOTA, } ss.:
County of Ramsey, }

In Probate Court, Special Term, October 19th, 1894.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

Pursuant to the order of this court made and entered in said matter on the 25th day of September, A. D. 1894, the hearing of the proofs of that certain instrument purporting to be an authenticated copy of the last will and testament of said deceased came on this day to be heard and considered.

And it appearing to the satisfaction of the court that the notice

directed in the order aforesaid to be given has been given, and it appearing to the court after a full examination of said matter that the said instrument was duly proved and allowed in the surrogate's court in and for the county of Wyoming, State of New York, according to the law of said State;

And it appearing to the court after further examination of the proofs in said matter that said Sophia M. Bristol died testate in the said county of Wyoming, State of New York, and that at the time of her death she left personal estate within the said county of Ramsey and real estate in the State of Minnesota on which said will may operate; that said instrument offered for probate as and for the last will and testament of said deceased was duly executed as *her* last will and testament of said testatrix according to law; that said testatrix at the time of executing the same was of sound mind, and that said instrument was duly proven and allowed in said State of New York:

Now, therefore, it is ordered, adjudged, and decreed that said instrument be, and hereby is, established and allowed as the last will and testament of said Sophia M. Bristol, deceased, and the same is hereby allowed and admitted to probate and ordered filed and recorded.

Ordered further that said copy of said will and testament
19 and the *the* probate thereof (and probate thereof in this said county) be recorded.

By the court:

JOHN B. OLIVIER,
Judge of Probate.

[L. S.]

(Endorsed:) Order admitting foreign will to probate. Filed the 19th day of October, A. D. 1894. Frank Robert, Jr., clerk of probate. Recorded in 45, page 370.

20 *Order for Bond and Letters.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Probate Court.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

The last will and testament of the above-named deceased having been duly admitted to probate and James Bristol, named as executor of said will, having applied for letters testamentary to be issued to him thereon—

Ordered that the said James Bristol make and deliver to the judge of probate of Ramsey county his bond in the penal sum of seven thousand dollars, with satisfactory sureties, conditioned for the faithful performance of his duties as executor, as required by law.

Dated St. Paul, this 19th day of October, 1894.

By the court:

[L. S.]

JOHN B. OLIVIER,
Judge of Probate.

(Endorsed:) Recorded in Docket 39, on page 511. Filed this 19th day of October, 1894. Frank Robert, Jr., clerk of probate court.

21 *Executor's Bond.*

Know all men by these presents that we, James Bristol, as principal, and R. C. Jefferson and L. J. Gates, as sureties, are held and firmly bound unto John B. Olivier, judge of probate court of the county of Ramsey, Minnesota, in the sum of seven thousand dollars, lawful money of the United States, to be paid to the said judge of probate or his successors in office; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals this 19th day of October, A. D. 1894.

The condition of this obligation is such that if the above-bounden James Bristol, letters testamentary upon the estate of Sophia M. Bristol, late of Gainesville, Wyoming county, New York, deceased, being unto him granted, shall and will well and faithfully execute the trust reposed — him as executor of all and singular the goods, chattels, credits, and estate of said deceased, and shall make and return into the probate court of the county of Ramsey and State of Minnesota within three months a true and perfect inventory of all the goods, chattels, rights, credits, and estate of said deceased which shall come to him possession or knowledge or to the possession of any other person for him, and shall administer according to law and to the will of the said deceased all the goods, chattels, rights, credits, and estate of said deceased which shall at any time come to his possession or to the possession of any other person for him, and out of the same shall pay and discharge all debts, legacies, and charges chargeable on the same, or such dividends thereon as shall be ordered and decreed by said court, and shall render a true and just account of his administration to said court within one year, and at any other time when required by said court, and shall perform all orders and decrees of said court by him to be performed in the premises, then this obligation shall be void; otherwise
22 it shall be and remain in full force and virtue.

JAMES BRISTOL. [SEAL.]
R. C. JEFFERSON. [SEAL.]
L. J. GATES. [SEAL.]

Signed, sealed, and delivered in presence of—
EMERSON HADLEY.
CORA ZIEGLER.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Be it known that on this 19th day of October, A. D. 1894, personally appeared before me James Bristol, R. C. Jefferson, and L. J. Gates, to me well known to be the same persons who executed the

foregoing bond, and they severally acknowledged the same to be their own free act and deed, and that they executed the same for the uses and purposes herein expressed.

EMERSON HADLEY,
Notary Public, Ramsey Co., Minn.

[NOTARIAL SEAL.]

STATE OF MINNESOTA, } ss:
County of Ramsey, }

R. C. Jefferson and L. J. Gates, being duly sworn, each for himself deposes and says that he is a freeholder and resident of the State of Minnesota, and is worth the sum of seven thousand dollars over and above all just debts, liabilities, and responsibilities, and exclusive of his property exempt from execution.

R. C. JEFFERSON.
L. J. GATES.

Subscribed and sworn to before me this 19th day of October, 1894.

EMERSON HADLEY,
Notary Public, Ramsey Co., Minn.

[NOTARIAL SEAL.]

23 I do hereby approve the within bond.
Dated this 19th day of October, A. D. 1894.

JOHN B. OLIVIER,
Judge of Probate.

(Endorsed:) Filed October 19th, 1894. Frank Robert, Jr., clerk of probate.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

I hereby certify that the within executor's bond was duly recorded this 19th day of Oct., A. D. 1894, in Book No. 8 of Bonds, page 151.

FRANK ROBERT, JR.,
Clerk of Probate.

24 STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

I do solemnly swear that I will well and truly execute the last will and testament of Sophia M. Bristol, deceased, by paying first the debts and then the legacies mentioned therein as far as *his* goods and chattels will thereunto extend and the law charge me, and that I will make a true and perfect inventory of all such goods and chattels, rights, credits, and effects as may come to my hands or knowledge belonging to the estate of said deceased and render a fair and just account of my executorship, when thereunto required by law, to the best of my knowledge and ability, so help me God.

JAMES BRISTOL.

Sworn to and subscribed before me this 19th day of October, A. D. 1894, at St. Paul, in said county.

EMERSON HADLEY,
[NOTARIAL SEAL.] *Notary Public, Ramsey Co., Minn.*

(Endorsed:) Executor's oath. Filed the 19th day of October, A. D. 1894. Frank Robert, Jr., clerk of probate.

25 STATE OF MINNESOTA, } ss:
County of Ramsey, }

The last will of Sophia M. Bristol, deceased, having been proved and recorded in the probate court of the county of Ramsey, *and* James Bristol, who is named therein as such, is hereby appointed executor.

Witness John B. Olivier, judge of the probate court of the
[L. S.] county of Ramsey, and the seal of the court affixed, the 19th day of October, A. D. 1894.

By the court:

JOHN B. OLIVIER,
Judge of Probate Court, Ramsey County, Minnesota.

(Endorsed:) Letters testamentary. Issued this 19th day of Oct., A. D. 1894, and recorded in letters testamentary, in Book No. 6, page 43. Frank Robert, Jr., clerk of probate court.

26 STATE OF MINNESOTA, } ss:
County of Ramsey, }

Probate Court.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

Letters testamentary on the estate of Sophia M. Bristol, deceased, late of the town of Gainesville, county of Wyoming and State of New York, being granted James Bristol, executor—

It is ordered that six months be, and the same is hereby, allowed from and after the date of this order in which all persons having claims or demands against the said deceased are required to file the same in the probate court of said county for examination and allowance or be forever barred.

It is further ordered that the first Monday in May, 1895, at 10 o'clock a. m., at a general term of said probate court, to be held at the court-house, in the city of Saint Paul, in said county, be, and the same hereby is, appointed as the time and place when and where the said probate court will examine and adjust said claims and demands.

And it is further ordered that notice of such hearing be given to all creditors and persons interested in said estate by forthwith publishing this order once a week for three successive weeks in the St.

Paul Weekly Pioneer Press, a weekly newspaper printed and published in said county.

Dated at Saint Paul this 19th day of October, 1894.

By the court:

JOHN B. OLIVIER,
Judge of Probate.

[L. S.]

(Endorsed:) Order for creditors to present claims. Recorded in Docket 46, on page 154. Filed this 19th day of Oct., A. D. 1894. Frank Robert, Jr., clerk of probate court.

27 *Affidavit of Publication.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

W. J. Driscoll, being duly sworn, deposes and says that the annexed printed copy of notice of estate of Bristol was taken from the Weekly Pioneer Press, a daily newspaper, which during the whole time of the publication of said notice, hereinafter stated, has been and is printed and published in the English language, in the city of St. Paul, Ramsey county and State of Minnesota, and published and generally circulated in said county for more than one year next preceding the date of the first publication hereinafter named, and during all said times was a newspaper as defined in section 1, chapter 33, of the General Laws of Minnesota for 1893, and that the publishers of the said paper have filed with the county auditor of said Ramsey county an affidavit in all respects complying with the requirements of section 2 of chapter 33 of the General Laws of 1893; that the said notice was duly printed and published in said newspaper in the English language once in each week for the period of three successive weeks, on Thursday of each week, commencing on the 25th day of October, 1894, on which day last mentioned it was first published, and then on the 1st day of November and ending on the 8th day of November, 1894, on which day last mentioned it was last published, upon which days and times of publication aforesaid the said newspaper was regularly printed and published, and that during the whole time of the said publication he was one of the printers and publishers of the said newspaper.

W. J. DRISCOLL.

Subscribed and sworn to before me this 9th day of November, A. D. 1894.

[NOTARIAL SEAL.]

G. E. SAMPSON,
Notary Public, Ramsey County, Minn.

Printer's fee, $5.22.

28 STATE OF MINNESOTA, } ss:
County of Ramsey, }

Probate Court.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

Letters testamentary on the estate of Sophia M. Bristol, deceased, late of the town of Gainesville, county of Wyoming, and State of New York, being granted to James Bristol, executor—

It is ordered that six months be, and the same is hereby, allowed from and after the date of this order in which all persons having claims or demands against the said deceased are required to file the same in the probate court of said county for examination and allowance or be forever barred.

It is further ordered that the first Monday in May, 1895, at 10 o'clock a. m., at a general term of said probate court, to be held at the court-house, in the city of Saint Paul, in said county, be, and the same hereby is, appointed as the time and place when and where the said probate court will examine and adjust said claims and demands.

And it is further ordered that notice of such hearing be given to all creditors and persons interested in said estate by forthwith publishing this order once in each week for three successive weeks in the St. Paul Weekly Pioneer Press, a weekly newspaper printed and published in said county.

Dated at St. Paul this 19th day of October, 1894.

By the court:

[L. S.] JOHN B. OLIVIER,
Judge of Probate.

BUNN & HADLEY,
Attorneys for Executor, St. Paul, Minn.

(Endorsed:) Filed May 9, 1895. Frank Robert, Jr., clerk.

29 STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court, Special Term, Oct. 19, 1894.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

Letters testamentary on said estate having been granted to James Bristol, as executor of said estate—

It is ordered, and by virtue and in pursuance of the statute in such case made and provided this court doth hereby order, that the said executor be, and he is hereby, allowed twelve months from and after the date hereof for disposing of the estate and paying the debts of said deceased, and no longer, unless the time above limited shall be extended by order of this court for cause shown.

By the court:

[L. S.] JOHN B. OLIVIER,
Judge of Probate.

(Endorsed:) Order limiting time to pay debts. Recorded in Order Book No. 46, page 365. Filed the 19th day of October, A. D. 1894. Frank Robert, Jr., clerk of probate.

30 STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

Letters testamentary having been granted unto James Bristol, of Gainesville, Wyoming county, and State of New York, on said estate, and it appearing that said deceased left goods, chattels, rights, credits, and estate within this county, and that it is necessary that the same be duly appraised, *and* now, on application of said James Bristol—

It is ordered that R. C. Jefferson, of Ramsey county, and C. M. McClure, of Washington county, be, and they are hereby, appointed such appraisers.

And it is further ordered that such appraisers, before entering upon their duties, be sworn to the faithful discharge of their trust, and that the appraisal by them made of all the estate and effects of the said deceased be returned to the said James Bristol, as aforesaid, to be by him returned to the probate court.

Dated at St. Paul this 19th day of October, 1894

By the court:

JOHN B. OLIVIER,
Judge of Probate.

[L. S.]

(Endorsed:) Order appointing appraisers. Filed this 19th day of October, 1894, and recorded in Book 46 of Orders, on page 472. Frank Robert, Jr., clerk of probate court.

31 STATE OF MINNESOTA, }
County of Ramsey. }

Probate Court.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

Oath of Appraisers.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

R. C. Jefferson and C. M. McClure, being each duly sworn, doth, each for himself, depose and say that he will honestly, faithfully, and impartially discharge and execute the duties and trust of appraiser of the real estate and of all the goods, chattels, rights, and credits of Sophia M. Bristol, late of the county of Wyoming, State of New York, in said State, and according to the best of his knowledge, judgment, and ability.

R. C. JEFFERSON.
C. M. McCLURE.

Subscribed and sworn to before me this 19th day of October, 1898.

EMERSON HADLEY,

[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minnesota.*

Inventory and Appraisement

Of all real estate and all the goods, chattels, rights, and credits and estate of Sophia M. Bristol, deceased, which have come into the possession or to the knowledge of the undersigned, James Bristol, executor of the said estate, in the State of Minnesota.

Dated this 19th day of October, A. D. 1894.

No.	Class 1—Real estate.	Remarks.	Value.
	All in Washington county.		
1	S. E. ¼ of S. W. ¼ & S. W. ¼ of S. E. ¼, sec. 28, T. 28, R. 20		$1,750.00
2	N. ½ of N. E. ¼, sec. 25, T. 32, R. 21		400.00
32			
3	S. ½ of S. ½ of N. E. ¼, sec. 25, T. 32, R. 21		300.00
4	Middle ⅓ of block 13, original city of Stillwater		1,200.00
5	S. E. ¼ of S. E. ¼, sec. 15, T. 31, R. 21		2,000.00
6	E. ½ of N. E. ¼, sec. 22, T. 31, R. 21		
7	Lot 1, block 2, Wilson's addition to city of Stillwater		1,250.00
8	Lot 28, block 13, Churchill, Nelson & Slaughter's addition to Stillwater		400.00
9	S. W. ¼ of sec. 24, T. 29, R. 20		1,350.00
10	N. ½ of S. W. ¼ of sec. 20, T. 38, R. 21		2,100.00
11	N. ½ lot 1, block 18, Carli & Schulenberg's add. to Stillwater		625.00
12	S. E. ¼ of N. E. ¼, sec. 24, T. 28, R 20		1,200.00
13	N. W. ¼ of S. W. ¼ and S. W. ¼ of N. W. ¼, sec. 2, T. 20, R. 21		1,000.00
14	N. ½ of S. E. ¼ and S. E. ¼ of S. E. ¼, sec. 3, T. 30, R. 21		1,500.00
15	E. 64½ acres of E. ½ N. W. ¼ of sec. 23, T. 31, R. 21.		3,200.00
16	N. ½ of N. W. ¼ and W. 15½ acres of S. W. ¼ of N. E. ¼ of sec. 23, T. 31, R. 21		
17	N. W. ¼ of N. E. ¼ and N. E. ¼ of N. W. ¼, sec. 36, T. 31, R. 20		600.00
18	S. W. ¼ of S. W. ¼ and S. E. ¼ of S. W. ¼, sec. 15, T. 31, R. 21		400.00
19	Lots 9, 11, & 13, block 6, Gray & Slaughter's addition to the city of Stillwater		500.00
20	Lots 12 & 13, block 16, Churchill, Nelson & Slaughter's addition to Stillwater		2,200.00
21	Lots 7 and 8, block 6, original city of Stillwater		1,100.00
22	S. W. ¼ of N. W. ¼, sec. 28, T. 28, R. 20.		750.00
23	W. ½ of N. E. ¼ and E. ½ of N. W. ¼, sec. 15, T. 27, R. 20		1,500.00
24	Part of the N. ½ of N. W. ¼, sec. 2, T. 30, R. 30 (79 acres)		2,000.00
25	Lots 11 and 12 of block 12, Holcomb's addition to the city of Stillwater		150.00
26	S. ½ of S. W. ¼, sec. 2, T. 32, R. 20		1,000.00
27	N. ½ of S. E. ¼, sec. 24, T. 31, R. 20		800.00
28	S. W. ¼ of N. W. ¼, sec. 12, T. 31, R. 21		600.00

No.	Class 1—Real estate.	Remarks.	Value.
33	Following in Chisago county, Minnesota.		
29	N. W. ¼ of N. W. ¼, sec. 4, T. 35, R. 20		
30	N. W. ¼ of N. E. ¼, sec. 5, T. 35, R. 20	.....	700.00
31	S. W. ¼ of S. W. ¼, sec. 33, T. 36, R. 20		
32	S. E. ¼ of N. E. ¼, sec. 31, T. 36, R. 20	.....	800.00
33	S. ½ of N. E. ¼, sec. 8, T. 37, R. 20	.....	500.00
34	W. ½ of S. E. ¼ & E. ½ of S. W. ¼, sec. 4, T. 37, R. 21	.....	1,000.00
35	S. ½ of S. E. ¼, sec. 7, T. 27, R. 20		
36	E. ½ of N. W. ¼ of sec. 18, T. 32, R. 20	.....	500.00
37	S. W. ¼ of S. W. ¼, sec. 18, and N. E. ¼ of N. W. ¼, and west ½ of N. W. ¼, sec. 19, T. 33, R. 19	.....	1,000.00
38	N. ½ of N. E. ¼, sec. 26, T. 37, R. 21	.....	500.00
	In Isanti county, Minnesota.		
39	S. W. ¼, sec. 21, T. 35, R. 22	.....	750.00
No.	Class 5—Mortgages, bonds, notes, and other written evidences of debst.	Remarks.	Value.
5	Bonds Stevens county, Minn., $1,000 each	.....	$5,000.00
	Total appraisement	.....	$40,625.00

JAMES BRISTOL, *Executor.*

We, the undersigned appraisers, do hereby certify that, having first taken and subscribed the oath hereto annexed, we have appraised all the property described and mentioned in the above inventory which has been to us exhibited, and have classed the different items under their respective heads, and have set down
34 opposite to each item, in figures, the value thereof in money as by us determined, and have footed up the amount of each class.

Witness our hands this 10th day of October, A. D. 1894.

R. C. JEFFERSON,
C. M. McCLURE,
Appraisers.

(Endorsed:) Inventory and appraisement. Filed this 24th day day of October, A. D. 1894. Frank Robert, Jr., clerk of probate court.

35 COUNTY AUDITOR'S OFFICE,
STILLWATER, WASHINGTON COUNTY, MINNESOTA.

The estate of Sophia M. Bristol to Washington county, Dr.

For taxes on personal property situate in the city of Stillwater, in said Washington county, for the year A. D. 1883	$481.51	
For penalty of 5 per cent. upon failure to pay such taxes prior to March 1st, 1884	24.07	
		$505.58
For interest on this amount from August 1st, 1884.		
For taxes on personal property situate in the city of Stillwater, in said Washington county, for the year A. D. 1884	4,287.40	
For penalty of 5 per cent. upon failure to pay such taxes prior to March 1st, 1885	214.37	
		4,501.77
For interest on this amount from the 1st of August, 1885		
For taxes on personal property situate in the city of Stillwater, in said Washington county, for the year A. D. 1885	4,547.40	
For penalty of 10 per cent. upon failure to pay such taxes prior to March 1st, 1886	454.74	
		5,002.14
For interest on this amount from August 1st, 1886		
For taxes on personal property situate in the city of Stillwater, in said Washington county, for the year A. D. 1886	4,937.40	
For penalty of 10 per cent. upon failure to pay such taxes prior to March 1st, 1887	493.74	
		5,431.14
For interest on this amount from the 1st of August, 1887		
For taxes on personal property situate in the city of Stillwater, in said Washington county, for the year A. D. 1887	5,571.97	
For penalty of 10 per cent. upon failure to pay such taxes prior to March 1st, 1888	557.19	
		6,129.16
For interest on this amount from August 1st, 1888		
36 For taxes on personal property situate in the city of Stillwater, in said Washington county, for the year A. D. 1888	5,506.82	
For penalty of 10 per cent. upon failure to pay such taxes prior to March 1st, 1889	550.68	
		6,057.50

For interest on this amount from August 1st, 1889.....		
For taxes on personal property situate in the city of Stillwater, in said Washington county, for the year A. D. 1889.....	6,163.93	
For penalty of 10 per cent. upon failure to pay such taxes prior to March 1st, 1890.....	616.39	
		6,780.32
For interest on this amount from August 1st, 1890.		
For taxes on personal property situate in the city of Stillwater, in said Washington county, for the year A. D. 1890	5,576.90	
For penalty of 10 per cent. upon failure to pay such taxes prior to March 1st, 1891.....	557.69	
		6,134.59
For *taxes* on this amount from August 1st, 1891.		
For taxes on personal property situated in the city of Stillwater, in said Washington county, for the year A. D. 1891.....	5,576.90	
For penalty of 10 per cent. upon failure to pay such *taxes* prior to March 1st, 1892	557.69	
		6,134.59
For interest on this amount from August 1st, 1892.		
For taxes on personal property situate in the city of Stillwater, in said Washington county, for the year A. D. 1892.....	6,296.50	
For penalty of 10 per cent. upon failure to pay such taxes prior to March 1st, 1893.....	629.65	
		6,926.15
For interest on this amount from August 1st, 1893.		
For taxes on personal property situate in the city of Stillwater, in said Washington county, for the year A. D. 1893.....	5,397.00	
For penalty of 10 per cent. upon failure to pay such taxes prior to March 1st, 1894.....	539.70	
		5,936.70
For interest on this amount from August 1st, 1894.		
For taxes on personal property situate in the city of Stillwater, in said Washington county, for the year A. D. 1894.....	4,677.40	
For penalty of 10 per cent. upon failure to pay such taxes prior to March 1st, 1895.....	467.74	
		5,145.14
		$64,684.78

37 The said Sophia M. Bristol was not on the 1st day of March, A. D. 1894, or at any time thereafter until her death, a resident of the State of Minnesota, nor was she during such time within the State of Minnesota, except temporarily, and that the whole period of time spent in said State of Minnesota by said Sophia M

Bristol after the 1st day of March, A. D. 1884, until her death did not exceed one year.

STATE OF MINNESOTA, } ss:
County of Washington, }

I, Charles H. Browne, county auditor of the county of Washington, in the State of Minnesota, do hereby certify that the sum of $59,539.64, included in the above and foregoing claim of Washington county against the estate of Sophia M. Bristol for $64,684.78, for taxes levied and assessed against said Sophia M. Bristol, during her lifetime, during each of the years A. D. 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, and 1893, is just and true, as shown by the tax books in my office, and that no payments have been made thereon, and that there are no offsets to the same, to my knowledge.

CHARLES H. BROWNE,
County Auditor.

[AUDITOR'S SEAL.]

38 STATE OF MINNESOTA, } ss:
County of Washington, }

I, August Booren, county treasurer of the county of Washington, in the State of Minnesota, do hereby certify—

That the sum of $5,145.14, included in the above and foregoing claim of Washington county against the estate of Sophia M. Bristol for taxes levied and assessed against said Sophia M. Bristol on personal property in the year A. D. 1894, is just and true, as shown by the duplicate tax-list of the city of Stillwater and the records in my office, and that said taxes have not been paid, and that there is no offset to the same, to the knowledge of this affiant.

AUG. BOOREN,
County Treasurer.

STATE OF MINNESOTA, } ss:
County of Washington, }

August Booren, being first duly sworn, deposes and says that he is the county treasurer of said county of Washington and the same person who signed the foregoing certificate, and that said certificate is in all things true.

AUG. BOOREN.

Subscribed and sworn to before me this eighteenth day of April, A. D. 1895.

LOUIS L. MANWARING,
[NOTARIAL SEAL.] *Notary Public, Washington County, Minn.*

39 STATE OF MINNESOTA, } ss:
County of Washington, }

STATE OF MINNESOTA, } ss:
County of Washington, }

Charles H. Browne, being by me first duly sworn, deposes and says that he is the county auditor of Washington county, Minnesota, and as such officer makes this affidavit for and on behalf of said county.

Deponent further says that the above and foregoing claim of said Washington county against the estate of Sophia M. Bristol for the sum of $64,684.78, with interest on the sum of $505.58 from the 1st day of August, 1884; on the sum of $4,501.77 from the 1st day of August, 1885; on the sum of $5,002.14 from the 1st day of August, 1886; on the sum of $5,431.14 from the 1st day of August, 1887; on the sum of $6,129.16 from the 1st day of August, 1888; on the sum of $6,057.50 from the 1st day of August, 1889; on the sum of $6,780.32 from the 1st day of August, 1890; on the sum of $6,134.59 from the 1st day of August, 1891; on the sum of $6,134.59 from the first day of August, 1892; on the sum of $6,926.15 from the 1st day of August, 1893, and on the sum of $5,936.70 from the 1st day of August, 1894, for taxes due said county for the years A. D. 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, and 1894, is just and true, and that no payments have been made thereon, and that there are no offsets to the same, to the knowledge of affiant.

CHARLES H. BROWNE.

Subscribed and sworn to before me this 18th day of April, A. D. 1895.

LOUIS L. MANWARING.
[NOTARIAL SEAL.] *Notary Public, Washington Co., Minn.*

(Endorsed:) Received Ap'l 18, 1895. Frank Robert, Jr., clerk.

40 STATE OF MINNESOTA, }
County of Ramsey. }

Probate Court.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

In the Matter of the Allowance of the Claim of Washington County, Minnesota.

Now comes James Bristol, executor of the last will and testament of Sophia M. Bristol, deceased, and for his answer and objections to the allowance of the claim of Washington county, Minnesota, filed herein, alleges:

That the said Sophia M. Bristol was for more than fifteen years next prior to her death, which occurred on the eleventh day of August, 1894, a resident and citizen of the State of New York, and that James Bristol, the executor above named, is now and for more

than fifteen years last past always has been a resident and citizen of the State of New York; that Washington county is a municipal corporation organized and existing under the laws of Minnesota; that the said Sophia M. Bristol was not at the time of her death and neither is her estate nor James Bristol, the executor of her said last will and testament, now indebted to said Washington county, Minnesota, in any sum whatever, either for taxes or penalties or otherwise, nor are there any taxes of any kind due or owing from said estate or said executor to said Washington county.

The said executor admits that said Washington county has made pretended assessments of certain taxes upon the property of said Sophia M. Bristol at the times in the amounts set forth in the verified claim of Washington county, filed herein, but that said taxes so pretended to be assessed were attempted to be assessed by said county of Washington and the officers and agents thereof upon credits other than of bank, banker, or broker or stock jobber
41 belonging to said Sophia M. Bristol, situated in the county of Washington and State of Minnesota, on the 1st day of May in each of the years from A. D. 1883 to A. D. 1894, inclusive; that at no time during said period did the said Sophia M. Bristol hold or own any such credits or personal property of any kind within the State of Minnesota, but that during said period said Sophia M. Bristol has loaned sums of money to various parties and taken promissory notes therefor, and as security therefor mortgages on real estate situated in Washington county, Minnesota, but that during all of said time the said promissory notes have always been held and kept by said Sophia M. Bristol at her home in the State of New York and not within the State of Minnesota or the said county of Washington, and none of the property on which said taxes were assessed was subject to taxation in the State of Minnesota, but the same and all thereof was situated and had its situs at the home of said Sophia M. Bristol in Wyoming county and State of New York, and that during said time said Sophia M. Bristol has been duly assessed taxes on the same property, and has been compelled to pay and has regularly paid taxes upon the same to the town of Gainesville, Wyoming county, State of New York.

That the above-named court has no jurisdiction over any of the said property attempted to be assessed.

Said James Bristol, as executor aforesaid, further alleges that even if said property is subject to taxation in Washington county, Minnesota, that all the said taxes set forth in the claim filed herein have been unfairly and unequally assessed; that the same have been assessed upon a valuation of the property assessed at amounts ranging between $165,000 and $196,772 from year to year during the period from 1884 to 1894, inclusive; that such valuation is largely in excess of the true value of said property assessed at the times when such taxes were assessed, and said James Bristol, executor aforesaid, is informed and verily believes that at no time between May 1st, 1884, and May 1st, 1894, or on either of those days, has the true value of the property of said Sophia M. Bristol on which said taxes were assessed been more than $100,000.

42 Said James Bristol, as executor, further alleges that said taxes have been assessed upon a valuation of said credits fixed at the amount payable thereon, without regard to the true value thereof.

That said assessments and each of them have been attempted to be made under the provision- of section 28 of chapter 11 of the General Statutes of Minnesota of the year 1878, which provides that every credit for a sum certain payable in money shall be valued for the purpose of assessments of taxes at the full price of the same so payable; that said statute is contrary to section one of article nine of the constitution of the State of Minnesota and void, and said assessment- of taxes and each of them are illegal and void.

Further answering, said James Bristol, executor aforesaid, alleges that the assessment, levy, and collection of said taxes and each of them is in violation of the Constitution of the United States, in this, that thereby a citizen of New York is deprived of a privileges and immunity granted to the citizens of the State of Minnesota; also in that it deprives a person of property without due process of law, and, further, in that thereby private property is taken for public use without just compensation, and the assessment, levy, and collection of said taxes and each of them are also contrary to the fourteenth amendment to the Constitution of the United States, in this, that thereby the State of Minnesota is enforcing a law which does abridge the privileges and immunities of a *of a* citizen of the United States, and does deprive a person of property without due process of law, and does deny a person within its jurisdiction the equal protection of the laws.

That said assessments and levy of said taxes and each of them are also invalid and unconstitutional for the reason that by assessing and levying the same the State of Minnesota is attempting to assess and levy taxes on property situated out of the State of Minnesota and to give its tax laws an extraterritorial jurisdiction.

43 Wherefore said James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, prays that the claim of Washington county and the whole thereof be disallowed.

JAMES BRISTOL,
Executor of the Last Will and Testament of Sophia M. Bristol, Deceased.

BUNN & HADLEY,
Attorneys for said Examiner.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

James Bristol, being duly sworn, says that he is the James Bristol, executor of the last will and testament of Sophia M. Bristol; that the foregoing answer and objections to the claim of Washington county, Minnesota, *is* true, except as to matters therein stated on information and belief, and as to those matters he believes *it* to be true.

JAMES BRISTOL.

Subscribed and sworn to before me this 29th day of April, A. D. 1895.

EMERSON HADLEY,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minnesota.*

(Endorsed:) Answer and objections. Filed April 30, 1895. Frank Robert, Jr., clerk.

44 STATE OF MINNESOTA, }
County of Ramsey. }

Probate Court.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

In the Matter of the Allowance of the Claim of Washington County, Minnesota.

The petition of James Bristol, executor of the last will and testament of Sophia M. Bristol, deceased, respectfully represents to the court:

That the last will and testament of Sophia M. Bristol, deceased, was duly admitted to probate in the above-named court on the 19th day of October, 1894; that said court then and there had jurisdiction of the same so far as it operated upon property of the said Sophia M. Bristol, deceased, within the State of Minnesota, and of the estate of said Sophia M. Bristol within said State; that the said Sophia M. Bristol died seized of certain real estate situate within the State of Minnesota, and also possessed of certain personal property situate within the county of Ramsey and State of Minnesota; that on said 19th day of October, 1894, letters testamentary on said last will and testament were duly issued by said court to said James Bristol, who thereafter duly qualified as executor of said last will and testament, and is now said executor; that the above entitled action has been brought and is pending in the probate court of Ramsey county, in the State of Minnesota, and said action was commenced by the said Washington county of Minnesota on the 18th day of April, 1895, by filing its duly verified claim in said probate court; that the time for answering and objecting to said claim has not yet expired according to the laws of the State of Minnesota and the rules of said court; that the time for filing claims against said estate in said court has expired, and the said claim of Washington county is the only claim filed therein.

45 That said action is a suit of a civil nature brought by the said Washington County to recover from the estate of said Sophia M. Bristol and the said James Bristol, executor of the last will and testament of said deceased, general taxes and penalties thereon and interest, amounting to sixty-four thousand six hundred eighty-four and *eighty-four and* $\frac{78}{100}$ ($64,684.78) dollars, exclusive of interest; all of which matters and things will more fully appear in the verified claim of said Washington county, which is referred to and made part of this partition.

The said James Bristol, executor of the last will and testament of Sophia M. Bristol, is and has been all the time during the fifteen years last past a citizen and resident of the State of New York, and during all the said time has had his home and resided at Gainesville, in Wyoming county, in the State of New York; that said Sophia M. Bristol was for more than fifteen years prior to her death, which occurred August 11th, 1894, a resident and citizen of the town of Gainesville, county of Wyoming and State of New York; that said Washington county, Minnesota, is and was at the time of the commencement of this action a municipal corporation organized and existing under the laws of the State of Minnesota.

That the said James Bristol, executor, as aforesaid, makes and files with this petition a bond, with a good and sufficient surety, for his entering into the circuit court of the United States for the district of Minnesota on the first day of its next session a copy of the record in this suit and for paying all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully and improperly removed thereto.

Wherefore said James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, prays the said State court to accept this petition and bond and proceed no further in said suit, and that said suit be removed to the circuit court of the United States for the district of Minnesota, third division.

46 Dated April 29th, 1895.

BUNN & HADLEY,
Attorneys for James Bristol, Executor of the Last Will and Testament of Sophia M. Bristol, Deceased.

JAMES BRISTOL,
Executor of the Last Will and Testament of Sophia M. Bristol, Deceased.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

James Bristol, being duly sworn, deposes and says that the foregoing is true.

JAMES BRISTOL.

Subscribed and sworn to before me this 29th day of April, 1895.

EMERSON HADLEY,
[NOTARIAL SEAL.] *Notary Public, Ramsey Co., Minn.*

47 Know all men by these presents that James Bristol, executor of the last will and testament of Sophia M. Bristol, deceased, as principal, and James Kasson and R. M. Jefferson, as sureties, are held and firmly bound unto the County of Washington, State of Minnesota, in the penal sum of five hundred ($500) dollars; for the payment of which, well and truly to be made, the said obligors bind themselves and their respective successors, heirs, executors, administrators, and assigns firmly by these presents.

The condition of this obligation is such that whereas the said County of Washington, State of Minnesota, has commenced an

action against James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, in the probate court of Ramsey county, Minnesota, which action is now pending, and the said James Bristol, as executor aforesaid, desires and is about to apply to remove said action in accordance with law to the circuit court of the United States for the district of Minnesota, third division:

Now, therefore, if the said James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, shall enter in said circuit court on the first day of its next session a copy of the record in such suit and pay all costs that may be awarded by the said circuit court if the said court shall hold that said suit was wrongfully or improperly removed thereto, then this bond shall be void; otherwise of full force and effect.

In witness whereof the said principal and sureties have hereunto set their hands and seals this 29th day of April, A. D. 1895.

JAMES BRISTOL, [SEAL.]
Executor of the Last Will and Testament of Sophia M. Bristol, Deceased.
JAMES KASSON. [SEAL.]
R. M. JEFFERSON. [SEAL.]

In presence of—
EMERSON HALDEY.
NETTIE BLASING.

48 STATE OF MINNESOTA, } *ss:*
County of Ramsey, }

On this 29th day of April, A. D. 1895, before me personally appeared James Kasson and R. M. Jefferson, the sureties above named, who, being duly sworn, did each of them depose and say that he is a surety on the foregoing bond, and that he is a resident and freeholder in the county of Ramsey and State of Minnesota, and is worth the sum of one thousand ($1,000) dollars in property within the State of Minnesota not exempt from execution and over and above his debts and liabilities.

JAMES KASSON.
J. M. JEFFERSON.

Subscribed and sworn to before me this 29th day of April, A. D. 1895.

[NOTARIAL SEAL.] EMERSON HADLEY,
Notary Public, Ramsey County, Minnesota.

49 STATE OF MINNESOTA, }
County of Ramsey. }

Probate Court.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

In the Matter of the Allowance of the Claim of Washington County, Minnesota.

On this 30th day of April, A. D. 1895, there was duly presented to the undersigned judge of said court the annexed petition and bond of James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, to remove this suit into the circuit court of the United States for the district of Minnesota, third division, said bond bearing date the 29th day of April, 1895, and being signed by said James Bristol, as executor, as aforesaid, as principal, and James Kasson and R. M. Jefferson, as sureties, on motion of Bunn and Hadley, attorneys for said James Bristol, said executor.

It is ordered that said bond be, and the same is, approved and said petition and bond accepted.

By the court:

G. WILLRICH,
Judge of Probate.

[L. S.]

(Endorsed:) Filed April 30, 1895. Frank Robert, Jr., clerk.

50 STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court.

I, Frank Robert, Jr., clerk of the probate court of said county, do hereby certify that I have compared the annexed copy of petition to admit foreign will to probate, exemplified copy of will and proceedings had thereon, order for hearing proofs of will, affidavit of publication, order admitting foreign will to probate, order for executor's bond and letters, executor's bond, executor's oath, letters testamentary, order for creditors to present claims, etc., order limiting time to pay debts, affidavit of publication of notice to creditors, order appointing appraisers, inventory and appraisement, claim of Washington county, answer and objections to claim, and petition, bond, and order on appeal with the original records and files preserved in said probate court, and that the same is a true and correct transcript therefrom and of the whole of said original records and files.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the probate court of said county, at St. Paul, in said county, this 11th day of May, A. D. 1895.

[Seal of Probate Court.]

FRANK ROBERT, JR.,
Clerk of Probate, Ramsey Co., Minn.

51 STATE OF MINNESOTA, } ss:
County of Ramsey, }

I, Frank Robert, Jr., clerk of the probate court of said county, do hereby further certify that the foregoing is a true copy of the whole record of said probate court in the matter of the estate of Sophia M. Bristol and of the matter of the claim of Washington county, State of Minnesota, filed in said court against said estate, and of all papers filed in said matter up to and including the date hereof.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the probate court of said county, at St. Paul, in said county, the 11th day of May, A. D. 1895.

[Seal of Probate Court.]

FRANK ROBERT, JR.,
Clerk of Probate Court, Ramsey County, Minnesota.

(Endorsed:) Transcript of record. In the matter of the estate of Sophia M. Bristol, deceased. Claim of Washington county against Bristol estate for taxes. Filed May 23, 1895. Oscar B. Hillis, clerk.

52 And thereafterwards, to wit, on the 27th day of June, 1895, the following stipulation waiving jury and for order to file formal complaint was filed of record in said court, to wit:

53 Circuit Court of the United States, District of Minnesota, Third Division.

In the Matter of the Estate of SOPHIA M. BRISTOL.

It is hereby stipulated by and between the parties to the above-entitled cause that a trial by jury thereof be, and the same is hereby, waived.

It is further stipulated that an order may be entered requiring the claimant to file a formal complaint in said cause within ten days, and that the respondent have ten days thereafter to file an answer.

L. L. MANWARRING,
CLAPP & MACARTNEY,
Attorneys for Claimant.
BUNN & HADLEY,
Attorneys for Respondent.

Dated June 27th, 1895.

(Endorsed:) Stipulation waiving jury and for order to file formal complaint. Filed June 27th, 1895. Oscar B. Hillis, clerk.

54 And thereafter, to wit, on the 8th day of July, the following complaint was filed for record in said court, viz:

55 Circuit Court of the United States, District of Minnesota, Third Division.

In the Matter of the Estate of SOPHIA M. BRISTOL.

Now comes Washington County, the claimant in the above-entitled cause, and for its complaint against the above-named estate respectfully shows to the court and alleges:

First. That this claimant is and at all the times hereinafter mentioned has been a municipal corporation, to wit, an organized county created and existing under and pursuant to the laws of the State of Minnesota.

Second. That in and during each of the years A. D. 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, and 1894 certain taxes were duly levied and assessed on certain personal property of and belonging to the above-named Sophia M. Bristol, deceased, situate in the city of Stillwater, in said county of Washington, amounting in each of said years to the sums set opposite the respective years as follows—that is to say:

1883	$481.51	1889	6,163.93
1884	4,287.40	1890	5,576.90
1885	4,547.40	1891	5,576.90
1886	4,937.40	1892	6,296.50
1887	5,571.97	1893	5,397.00
1888	5,506.82	1894	4,677.40

Third. That the said Sophia M. Bristol failed and neglected to pay said taxes on the 1st day of March in each of the years following that in which said taxes were respectively levied, as hereinbefore set forth, or at any time thereafter, and that by reason of such failure said Sophia M. Bristol and her said estate became and was and is liable to pay a penalty amounting to five per cent. of the amount of such taxes for the years 1883 and 1884 and 10 per cent. for each year thereafter, and that the amount of said penalty for each of said years is as follows—that is to say:

56	1883	$24.07	1889	$616.39
	1884	214.37	1890	557.69
	1885	454.74	1891	557.69
	1886	493.74	1892	629.65
	1887	557.19	1893	539.70
	1888	550.68	1894	467.74

Fourth. That the said Sophia M. Bristol was not, on the 1st day of March, 1884, or at any time thereafter until her death, a resident of the State of Minnesota, nor was she during such time within the State of Minnesota except temporarily, and that the whole period of time spent in said State of Minnesota by said Sophia M. Bristol after the 1st day of March, 1884, until her death, which occurred prior to the 27th day of August, 1894, did not exceed one year.

And this claimant further shows that the said Sophia M. Bristol died testate, and that on or about the 19th day of October, 1894, the

will of said Sophia M. Bristol was duly admitted to probate in and by the probate court of Ramsey county, in the State of Minnesota, and that thereupon such proceedings were had in the matter of said estate that James Bristol, the executor named in said will, was duly appointed by said court as the executor of said estate, and that the said Bristol thereupon duly qualified as such executor and entered upon the discharge of his duties as such, and that thereafter and on the 18th day of April, A. D. 1895, and within the time required by the order duly made by said probate court, this claimant duly made and filed its verified claim against the estate of said Sophia M. Bristol in said probate court, as by law required.

And this claimant further shows that none of said taxes have ever been paid, and that the full amount thereof and of the penalties incurred, as aforesaid, with interest upon the amount of the taxes and penalty for each year from the 1st day of March, in the year after the year in which said taxes were levied, as aforesaid, is now actually and justly due and payable to this claimant.

Wherefore this claimant demands judgment against said estate of Sophia M. Bristol for the sum of sixty-four thousand six hundred eighty-four dollars and seventy-eight cents ($64,684.78) and interest thereon, as aforesaid.

L. L. MANWARRING &
CLAPP & MACARTNEY,
Attorneys for Claimant.

Filed July 8, 1895.

OSCAR B. HILLIS, *Clerk.*

57 And on August 15th, 1895, the following answer was filed for record in said court, to wit:

58 Circuit Court of the United States, District of Minnesota, Third Division.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

In the Matter of the Allowance of the Claim of Washington County, Minnesota.

Now comes the defendant, James Bristol, executor of the last will and testament of Sophia M. Bristol, deceased, and for his answer to the complaint of plaintiff herein alleges:

That the said Sophia M. Bristol was for more than fifteen years next prior to her death, which occurred on the eleventh day of August, 1894, a resident and citizen of the State of New York, and that James Bristol, the executor above named, is now and for more than fifteen years last past always has been a resident and citizen of the State of New York; that Washington county is a municipal corporation organized and existing under the laws of the State of Minnesota; that the said Sophia M. Bristol was not at the time of her death, and neither is her estate nor James Bristol, the executor of her said last will and testament, now indebted to said Washington county, Minnesota, in any sum whatever, either for taxes or

penalties or otherwise, nor are there any taxes of any kind due or owing from said estate or said executor to said Washington county.

The said executor denies that said Washington county has made pretended assessments of certain taxes against said Sophia M. Bristol on account of the property of said Sophia M. Bristol at the times and in the amounts set forth in the complaint of said Washington county herein, but that said taxes so pretended to be assessed were attempted to be assessed by said county of Washington and the officers and agents thereof on account of credits other than of bank, banker, or broker or stock jobber, belonging to said Sophia M. Bristol, situated in the county of Washington and State of Minnesota, on the 1st days of May in each of the years from A. D. 1883 to A. D. 1894, inclusive; that at no time during said
59 period did the said Sophia M. Bristol hold or own any such credits or personal property of any kind within the State of Minnesota, but that during said period said Sophia M. Bristol has loaned sums of money to various parties and taken promissory notes therefor and, as security therefor, mortgages on real estate situated in Washington county, Minnesota, but that during all of said time the said promissory notes have always been held and kept and controlled by said Sophia M. Bristol, at her home, in the State of New York, and not within the State of Minnesota or the said county of Washington, and none of the property on account of which said taxes were assessed was subject to taxation in the State of Minnesota, but the same and all thereof was situated and had its situs at the home of said Sophia M. Bristol, in the county of Wyoming and State of New York, and that during said time said Sophia M. Bristol has been duly assessed taxes on account of the same property and has been compelled to pay and has regularly paid taxes on account of the same to the town of Gainesville, Wyoming county, State of New York, and said Sophia M. Bristol has not been subject to the jurisdiction of the State of Minnesota, nor liable to be taxed therein.

That the said probate court of Ramsey county has no jurisdiction over any of the said property attempted to be assessed.

That the said will of Sophia M. Bristol was first probated in the surrogate's court of the county of Wyoming, State of New York, on the 27th day of August, A. D. 1894, which had jurisdiction thereof and of all the personal property of said Sophia M. Bristol, deceased; that the proceedings in the probate court of Ramsey county, Minnesota, are ancillary to the said proceedings in the surrogate's court of Wyoming county, New York, and only affect the property of said deceased within the State of Minnesota.

Said James Bristol, as executor aforesaid, further alleges that even if said property is subject to taxation in Washington county, Minnesota, that all the said taxes set forth in the claim filed have been unfairly and unequally assessed; that the same have
60 been assessed upon a valuation of the property assessed at amounts ranging between $165,000 and $196.772 from year to year during the period from 1884 to 1894, inclusive; that such valuation is largely in excess of the true value of said property assessed at the times when such taxes were assessed, and said James

Bristol, executor aforesaid, is informed and verily believes that at no time between May 1st, 1884, and May 1st, 1894, or on either of those days, has the true value of the property of said Sophia M. Bristol on which said taxes were assessed been more than $100,000.

Said defendant further alleges that if said taxes have been legally assessed, then all of said taxes assessed prior to the year 1889, as alleged in said complaint, had been due and payable, and the cause of action thereon accrued more than six years prior to the filing of the claim of plaintiff herein in the probate court of Ramsey county, Minnesota, as alleged in said complaint, and the claims of plaintiff for all such taxes, to wit, taxes levied during the years 1883 to 1888, inclusive, are barred by the statute of limitations of the State of Minnesota.

Said James Bristol, as executor, as a further defense alleges that said taxes have been assessed upon a valuation of said credits fixed at the amount payable thereon without regard to the true value thereof.

That said assessments and each of them have been attempted to be made under the provisions of section 28 of chapter 11 of the General Statutes of Minnesota of the year 1878, which provides that every credit for a sum certain payable in money shall be valued for the purpose of assessments of taxes at the full price of the same so payable; that said statute is contrary to section one of article nine of the constitution of the State of Minnesota and void, and said assessments of taxes and each of them are illegal and void.

Further answering, said James Bristol, executor aforesaid, alleges that the assessment, levy, and collection of said taxes and each of them *is* in violation of the Constitution of the United States in this, that thereby a citizen of New York is deprived of a privilege and immunity granted to the citizens of the State of Minnesota; also in that it deprives a person of property without due process of law,

and, further, in that thereby private property is taken for a
61 public use without just compensation, and the assessment, levy, and collection of said taxes and each of them are also contrary to the fourteenth amendment to the Constitution of the United States in this, that thereby the State of Minnesota is enforcing a law which does abridge the privileges and immunities of a citizen of the United States, and does deprive a person of property without due process of law, and does deny a person within its jurisdiction the *equal* protection of the laws.

That said assessment and levy of said taxes and each of them are also invalid and unconstitutional for the reason that by assessing and levying the same the State of Minnesota is attempting to assess and levy taxes on property situated out of the State of Minnesota, and to give its tax laws an extraterritorial jurisdiction.

That, save as hereinbefore admitted, said defendant, James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, denies each and every allegation in said complaint contained.

Wherefore said defendant demands that the complaint of plain-

tiff be dismissed, and that defendant recover his costs and disbursements.

BUNN AND HADLEY,
Defendant's Attorneys.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Emerson Hadley, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action; that the foregoing answer is true to the best of his knowledge, information, and belief, and that the reason why this affidavit of verification is not made by said defendant is that he is absent from the said county of Ramsey, wherein reside his said attorneys.

EMERSON HADLEY.

Subscribed and sworn to before me this 14th day of August, 1895.

[NOTARIAL SEAL.]

WINTHROP G. NOYES,
Notary Public, Ramsey County, Minnesota.

(Endorsed:) Answer. Filed Aug. 15th, 1895. Oscar B. Hillis, clerk.

62 And on August 18th, 1896, the following reply was filed of record in said court, to wit:

63 Circuit Court of the United States, District of Minnesota, 3rd Division.

In the Matter of the Estate of SOPHIA M. BRISTOL.

The County of Washington, claimant in the above-entitled proceeding, for reply to the answer of James Bristol in the above-entitled cause, respectfully shows to the court:

First. As to the allegation in the fourth folio of said answer, to wit, "But that during all of said time the said promissory notes have always been held and kept and controlled by said Sophia M. Bristol at her home in the State of New York and not within the State of Minnesota or said county of Washington," this claimant has no knowledge or information sufficient to form a belief, and therefore denies the same.

Second. As to the allegation in the fifth folio of said answer contained, to wit, "But the same and all thereof are situate and had its situs at the home of said Sophia M. Bristol in the county of Wyoming and State of New York," this claimant has no knowledge or information sufficient to form a belief, and therefore denies the same.

Third. As to the allegation in the fifth folio of said answer contained, "And that during said time said Sophia M. Bristol has been duly assessed taxes on account of the same property, and has been

compelled to pay and has regularly paid taxes on account of the same to the town of Gainesville, Wyoming county, State of New York," the said Washington County, claimant herein, has no knowledge or information sufficient to form a belief, and therefore denies the same.

Fourth. As to the allegation in the seventh folio of said answer contained, to wit, "That all the said taxes set forth in the claim filed herein have been unfairly and unequally assessed," and also as to the allegation in the seventh and eighth folios of said answer contained, to wit, "That such valuation is largely in excess
64 of the true value of said property assessed at the times when such taxes were assessed, and that at no time between May 1st, 1884, and May 1st, 1894, or on either of those dates, was the true value of the property of said Sophia M. Bristol on which said taxes were assessed more than one hundred thousand dollars," and also as to the allegation in the ninth folio of said answer contained, to wit, "That said taxes have been assessed upon a valuation of said credits fixed at the amount payable thereon, without regard to the true value thereof," this claimant denies said allegations and each thereof.

Wherefore said Washington County, claimant as aforesaid, demands judgment as in the complaint in this proceeding first demanded.

L. L. MANWARRING,
CLAPP & MACARTNEY,
Attorneys for Claimant.

STATE OF MINNESOTA, }
County of Ramsey, } *ss:*

Alvin E. Macartney, being by me duly sworn, deposes and says that he is one of the attorneys for the claimant in the above-entitled action; that he has read the foregoing reply and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated upon information and belief, and as to those matters that he believes it to be true.

ALVIN E. MACARTNEY.

Subscribed and sworn to before me this 13th day of Jan'y, A. D. 1896.

[NOTARIAL SEAL.]

BELLA C. RANKIN,
Notary Public, Ramsey County, Minn.

(Endorsed:) Reply. Filed Aug. 18th, 1896. Oscar B. Hillis, clerk.

65 Thereafter and on the 24th day of August, 1896, the following order of court was entered of record in said cause, to wit:

66 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1896.

MONDAY MORNING, *August 24th*, 1896.

Court opened pursuant to adjournment.

Present: Hon. Wm. Lochren, judge; Hon. E. C. Stringer, U. S. district attorney; Hon. R. T. O'Connor, United States marshal; Oscar B. Hillis, clerk.

In the Matter of the Estate of SOPHIA BRISTOL, Deceased. Claim of Washington County for Taxes. E. Law. 1096.

A stipulation waiving a jury, signed by the attorneys for the respective parties in this action, having been duly filed of record and said cause now coming on to be heard upon written stipulation of facts, also duly filed of record, the same is argued on behalf of the claimant by Geo. H. Sullivan and Moses E. Clapp and on behalf of respondent by C. W. Bunn and Emerson Hadley; whereupon said cause is duly submitted and by the court taken under advisement.

Ordered that George H. Sullivan be, and he hereby is, admitted to practice as an attorney, solicitor, counsellor, and proctor in this court.

Whereupon the said George H. Sullivan takes the required oath and signs the roll of attorneys.

67 And thereafter and on the 21st day of June, 1898, the court filed its written decision in words and figures following, to wit:

68 *Decision.*

United States Circuit Court, District of Minnesota, Third Division.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

In re Claim of Washington County, Minnesota.

In the settlement of this estate the County of Washington, Minnesota, claims a large sum as unpaid taxes assessed and levied against the personal estate of the deceased in her lifetime, taxable in said county of Washington during every year from 1883 to 1894, both years inclusive, together with penalties for non-payment and interest, all as stated and set forth in the statement of claim filed in the probate court and also in the complaint in this action.

The facts, so far as material, are stipulated and undisputed. Cyrus Jefferson, the father of Sophia M. Bristol, died in November, 1883. For 14 years before his death, being a citizen and resident of the State of New York, he loaned money to various persons residing in Minnesota upon their notes, payable to his order, secured by mortgages upon real estate in said Washington county and adjoining counties in said State of Minnesota. All these loans were

made and the notes and mortgages taken by and through William M. McClure, the agent of said Cyrus Jefferson, residing at Stillwater, in said Washington county, who, with full authority from said Cyrus Jefferson, made all such loans and took and retained all notes and securities and collected and reloaned the principal and interest and kept the same invested in that way, save as to such moneys as said Jefferson drew from time to time to pay his debts and defray his living expenses.

Shortly prior to May 1, 1883, said McCluer, by the direction of said Jefferson, loaned of said moneys to persons in said Washington county sums aggregating $18,000, taking notes and mortgages therefor, payable to said Sophia M. Bristol, and retained the same as her agent, and on the 18th of December, 1883, all other
69 notes and mortgages held by said McCluer as agent for said Cyrus Jefferson were assigned, passed, and transferred to said Sophia M. Bristol as her share of the estate of her said father, then recently deceased. She employed said William M. McCluer and also Charles M. McCluer as her agents at said Stillwater about said loaning business, giving to them all the authority before that time exercised by said William M. McCluer for her father, as aforesaid, and also a written power of attorney empowering them or either of them to satisfy and discharge or to sell and assign any and all mortgages then or thereafter in her name in the State of Minnesota and Wisconsin. All notes and mortgages of said Sophia M. Bristol were still left in the hands of these agents at Stillwater, and they continued to make collections, satisfy mortgages, and make new loans for said Sophia M. Bristol, keeping all of her moneys received or collected by them while in their hands deposited in bank as their own money and having all notes received for such loans made payable at their own office in said Stillwater, such notes being secured by mortgages in Washington and adjoining counties in Minnesota, as aforesaid.

In March, 1885, all of such notes then in the hands of said agents were delivered to said Sophia M. Bristol, and thereafter all new notes as taken by said agents in said business were sent to said Sophia M. Bristol at her home in New York; but all mortgages were retained by said agents, and said notes were returned to them whenever wanted for payment, renewal, or for foreclosure of securities. In August, 1890, said William M. McCluer died, and said Charles M. McCluer continued thereafter to act as sole agent for said Sophia M. Bristol, with the same powers as before, except that at some subsequent time she revoked the said written power of attorney, and thereafter executed satisfactions of mortgage herself. She never resided in said county of Washington, and had no taxable property therein other than the loans and indebtedness secured by mortgage upon lands in Minnesota under the charge and management of her said agents residing and having their office at Stillwater, in said Washington county, as aforesaid.

70 The question to be determined in this case is: Were the moneys and credits of said Sophia M. Bristol, so secured by

mortgages on lands in said Washington county and adjoining counties in Minnesota, taxable in said Washington county?

The power of taxation pertains to every sovereignty and is inseparable from it. Except as limited by the constitution, it is for the legislature to decide what persons and property shall be taxed and in what proportions and how taxes shall be assessed and collected. This authority extends to all persons and to all property within the territorial jurisdiction of the sovereignty, but cannot be extended to persons or property beyond its territorial limits. St. Louis *vs.* Ferry Co., 11 Wall., 423, 429, 430.

The statute of Minnesota, Gen. Stat. 1878, ch. 11, sec. 1: "All real and personal property in this State and all personal property of persons residing therein * * * is subject to taxation," is certainly broad enough to include personal property of every kind belonging to non residents having a situs within the State of Minnesota. *In re* Jefferson, 35 Minn., 215, 219.

If the situs of the personal property in question was in Minnesota, so that the property was within the jurisdiction and under the taxing power of that State, then its right and power to tax the property would not be affected by the fact that another State within whose jurisdiction the owner of the property resided had assumed to tax that owner in respect to the same property.

By a legal fiction the situs of personal property is for most purposes regarded as at the domicil of the owner, but this fiction cannot stand in the way of the taxing power of the sovereignty within whose territory the personal property has an actual location and situs. There is no difficulty in the case of tangible personal property, such as flocks, herds, merchandise, business outfits and appliances, and the like. Such property is visible, is protected by the laws of the sovereignty where situate, and subject to taxation there, irrespective of the residence of the owner.

71 A debt is an intangible species of property and ordinarily for purposes of taxation and all other purposes has no situs other than the domicil of the creditor. State Tax on Foreign-held Bonds, 15 Wall., 300; Kirtland *vs.* Hotchkiss, 100 U. S., 401.

But it has been held that where a creditor keeps his money for investment and reinvestment as a permanent business at a place other than his domicil, under the full control of an agent or agents resident at such place, he gives the debts a situs at the place where they are so created and managed, and they may be taxed there. This has been the decision of the highest courts of New York and Minnesota with reference to this very business of loaning money as carried on by Cyrus Jefferson through William M. McCluer. People *vs.* Smith, 88 N. Y., 576; *In re* Jefferson, 35 Minn., 215. This latter case cites many decisions sustaining the doctrine.

The fact that after March, 1885, the notes were sent to Mrs. Bristol in New York made no difference. Whether she regarded the notes as safer in her custody in New York State or had them sent in the hope of avoiding taxation in Minnesota is immaterial; the business remained under the full management and control of the agents at Stillwater as before. These very notes were by their terms

made payable at the office of those agents at Stillwater, and the notes were returned there for payment, renewal, foreclosure of securities, &c. Dundee Mortgage Co. *vs.* School District, 19 Fed., 359.

In the case just cited the court holds that a mortgage, whether considered as a conveyance or a mere contract giving a creditor a lien, is a contract affecting real property in the State and dependent on the State laws for its existence and enforcement, and hence may be taxed in the State without regard to the residence of the holder. In the case of Savings & Loan Soc. *vs.* Multnomah County, 18 Sup. Ct. Rep., 392, decided in March, 1898, the Supreme Court of the United States holds that the Oregon statute taxing as real
72 estate all mortgages on realty in that State is valid, though the owners reside in other States and have their notes and mortgages in their possession. The fact that the Oregon statute taxes mortgages on land as real estate is of no importance and merely formal, as the case concedes that by the law of Oregon a mortgage of land conveys no legal title and creates only a lien or incumbrance for the security of the debt. It cites with approbation the cases of Mumford *vs.* Sewall, 11 Or., 67, and Dundee Mortgage Co. *vs.* School Dist., 19 Fed., 359, which held that mortgages on real estate are taxable by the State without reference to the domicil of the owner. It appears to endorse that doctrine and explains and limits the language used in the previous cases of State Tax on Foreign-held Bonds, 15 Wall., 300, and Kirtland *vs.* Hotchkiss, 100 U. S., 491, which seemed to hold a contrary doctrine.

Under this last decision of the Supreme Court of the United States the personal property of Sophia M. Bristol consisting of debts secured by mortgages on lands in Minnesota was taxable in this State, and under the Minnesota statute it was properly listed and assessed in Washington county, where her agent resided. The claim of Washington must therefore be sustained.

Counsel will prepare and present findings in conformity with this opinion.

June 20, 1898.

WM. LOCHREN, *Judge.*

(Endorsed:) Decision. Filed June 21st, 1898. Henry D. Lang, clerk.

73 And on June 28th the court filed its finding and *and* order for judgment in words and figures following, to wit:

74 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1898.

WEDNESDAY MORNING, *June 28th*, 1898.

Court opened pursuant to adjournment.

Present: Hon. Charles F. Amidon, judge; Hon. Robert G. Evans, U. S. district attorney; Hon. R. T. O'Connor, U. S. marshal; Henry D. Lang, clerk.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased. *In re* Claim of Washington County, Minnesota. E. Law. 1096.

This action was originally commenced by filing of a duly verified claim of Washington county for personal property taxes in the sum of sixty-four thousand six hundred eighty-four and $\frac{78}{100}$ dollars ($64,684.78) and interest against the estate of Sophia M. Bristol, in the probate court of Ramsey county, Minnesota, on April 18, 1895. That thereafter and on April 29, 1895, James Bristol, as executor of the last will and testament of said Sophia M. Bristol, deceased, made answer and written objections to said claim in said probate court of Ramsey county, Minnesota.

That thereafter such proceedings were duly had that upon the petition of said James Bristol, as such executor, showing, among other things, that he was a citizen of the State of New York at the time said claim was so filed against said estate in said probate court, this proceeding and cause was duly removed from said pro-
75 bate court of Ramsey county to this court, and such proceedings were duly had therein that the same came on for trial before the court without a jury, the parties having duly waived a jury trial.

Messrs. Clapp & Macartney, L. L. Manwaring, and George H. Sullivan appeared as attorneys for claimant, Washington County, and Messrs. Bunn and Hadley appeared as attorneys for said estate of Sophia M. Bristol, deceased.

And the parties having duly submitted their evidence and stipulation of facts, after due consideration thereof the court doth find as facts therein:

I. That Cyrus Jefferson was the father of said Sophia M. Bristol, deceased, and died in November, 1883. For fourteen years just prior to his death he was a citizen and residents of the State of New York, and during said time loaned and invested large sums of money to various persons residing in Minnesota, upon their notes, payable to his order at said Stillwater, secured by mortgages on real estate in said Washington and adjoining counties in the State of Minnesota; all said loans and investments were made and the notes and mortgages taken by and through William M. McCluer, the agent of said Cyrus Jefferson, who resided at the city of Stillwater, in said Washington county, during all the time hereinafter mentioned, and who, with full authority from said Cyrus Jefferson, made all such loans and took and retained all notes and securities and collected and reloaned both the principal and interest of said loans at said city of Stillwater, in Washington county, Minnesota, and kept the same permanently invested in that way, as nearly as practicable, save as to such moneys as said Jefferson drew from time to time to pay his debts and living expenses.

II. Prior to May 1, 1883, said William M. McCluer, at said Stillwater, by the direction of said Jefferson, but otherwise with the same power and under the same authority and in the same manner, loaned of said moneys of said Cyrus Jefferson to persons in Wash-

ington county sums aggregating eighteen thousand dollars
76 ($18,000.00), taking notes and mortgages therefor in the name of and payable to said Sophia M. Bristol at said Stillwater, and retained the same as her agent, and handled and collected and reinvested the same in the same manner as he had those of Cyrus Jefferson.

III. After the death of said Cyrus Jefferson and on December 18, 1883, all the other notes and mortgages held by said McCluer as agent for said Cyrus Jefferson were transferred, assigned, and passed to said Sophia M. Bristol as her share of the estate of her said father. She thereupon employed said William M. McCluer and Charles M. McCluer, both of whom then and at all times herein mentioned resided at said Stillwater, as her agents at said city of Stillwater in and about said loaning business. She gave to them all the authority before that time exercised by said William M. McCluer for her father, Cyrus Jefferson, as aforesaid, and also gave to them a written power of attorney empowing them or either of them to satisfy and discharge or to sell and assign any and all mortgages then or thereafter in her name in the States of Minnesota or Wisconsin; all of said notes and mortgages of said Sophia M. Bristol, including those received by her as her share of her father's estate as well as those taken in her name by said William M. McCluer prior to the death of her father, as aforesaid, were still left by her in the hands of her agents in Stillwater, Minnesota, and said agents continued as before to make collections of both principal and interest due on said notes and mortgages, to satisfy and discharge mortgages, and to make new loans and investments upon like securities with the moneys so collected by them for said Sophia M. Bristol, and kept all of her moneys received or collected by them prior to transmittal or reinvestment of the same, and while in their hands, deposited in bank in said Stillwater as their money, and having all notes and mortgages received by them for such loans made payable at their own office in said city of Stillwater, said mortgages being upon lands in Washington and adjoining counties in Minnesota.

77 IV. In March, 1885, all of such notes then in the hands of said agents were delivered to said Sophia M. Bristol, and thereafter all new notes as taken by said agents in said business were sent to Sophia M. Bristol and kept by her at her home in New York, but were payable as before at the office of said agents in Stillwater, Minnesota; all mortgages securing such notes were retained by said agents, and said notes were returned to said agents at Stillwater by said Sophia M. Bristol from time to time whenever required by them for the purpose of renewal, payment, collection, or foreclosure of securities; that the said Wm. M. McCluer and Charles M. McCluer continued as agents for said Sophia M. Bristol, collecting money becoming due upon said notes and making loans in her name, sometimes under the direction of James Bristol, her husband, but generally upon their own judgment; that they remitted money to Sophia M. Bristol when she called for the same, and what was not received by her was invested in new loans, as aforesaid.

That said Sophia M. Bristol did receive from the proceeds of said collections at various times large sums of money through said agents, and all moneys collected were always subject to be sent to her or paid out in any way she should order.

V. In the month of August, 1890, said William M. McCluer died, and thereafter said Charles M. McCluer continued to act as sole agent for said Sophia M. Bristol at said city of Stillwater, Minnesota, with the same power as before exercised by him and said William M. McCluer, except that in November, 1890, Sophia M. Bristol revoked said power of attorney which authorized said agent to satisfy mortgages of record, and thereafter executed satisfactions of mortgages herself.

VI. Said loaning business was so carried on by said Sophia M. Bristol by and through her said agents at the city of Stillwater, Minnesota, in the manner aforesaid until her death, in the month of August, 1894.

VII. Said Sophia M. Bristol had no taxable property in said Washington county during any of the years hereinbefore or
78 hereinafter mentioned other than the loans and indebtedness mentioned, which were secured by mortgages upon lands in Minnesota, and which were under the charge and management of her said agents, who, during all said years and during all the time within which the taxes hereinafter mentioned were assessed and levied, resided and had their office and transacted said loaning business at the said city of Stillwater, in said county and State.

VIII. That the moneys originally sent by said Jefferson to said William M. McCluer and invested and reinvested by said McCluer, and afterwards by said Sophia M. Bristol kept and retained in the hands of said William M. McCluer and Charles M. McCluer as her agents, were so sent, retained, and kept in the hands of said agents in the city of Stillwater, Washington county, Minnesota, in and during each of the years when the taxes hereinafter mentioned were assessed and levied against said Sophia M. Bristol, as hereinafter specifically set forth, as and for a permanent investment and business under the full control of said agents, and said property and said loans acquired and had a situs in said city of Stillwater, Washington county, Minnesota, for the purpose of taxation.

IX. That the claimant herein, Washington County, is and for more than thirty years last past has been a municipal corporation, to wit, an organized county created and existing under and pursuant to the laws of the State of Minnesota.

X. That in and during each of the years from 1883 to 1894, inclusive, certain personal property taxes were duly assessed and levied against said Sophia M. Bristol by the proper taxing officers of said city of Stillwater and said Washington county on the personal property of said Sophia M. Bristol, deceased, consisting of the "credits other than that of bank, banker, broker, or stock jobber," and that said assessments were each in fact based upon credits due said Sophia M. Bristol on promissory notes of various persons residing in Washington county and other counties in Minnesota, payable to her order, secured by mortgages on real estate situate in

Washington county and other counties in the State of Minnesota.

79 Said notes were all made payable at the office of William M. McCluer or Charles M. McCluer, at the city of Stillwater. The assessed valuation of said personal property upon which said taxes were so assessed and levied for each of said years, the rate of the tax assessed upon property in the said city of Stillwater, in said county, that being the district where said property was assessed, in the number of mills levied on each dollar of property at the assessed valuation for each of said years, and the amount of said taxes so assessed and levied against said Sophia M. Bristol, deceased, for each of said years, are as set forth in the following schedule thereof, to wit:

Year.	Rate.	Valuation.	Tax.
	Mills.		
1883	26.9	17,900	481.51
1884	26.66	184,900	4,287.40
1885	26	174,900	4,547.40
1886	26	189,900	4,937.40
1887	29	192,137	5,571.97
1888	28	196,672	5,506.82
1889	34	181,292	6,163.93
1890	31	179,900	5,576.90
1891	31	179,900	5,576.90
1892	35	179,900	6,296.50
1893	30	179,900	5,397.00
1894	26	179,900	4,677.40

That the said Sophia M. Bristol failed and neglected to pay said taxes on the first day of March in each of the years following that in which said taxes were respectively levied, as hereinbefore set forth, or at any time thereafter, and that by reason of such failure said Sophia M. Bristol became and was and is liable to pay a penalty amounting to five per cent. on the amount of said taxes for the years 1883 to 1894, and ten per cent. on the amount of said taxes for each year thereafter, and that the amount of said penalty for each of said years is as follows—that is to say:

Year.	Penalty.	Year.	Penalty.
1883	24.07	1888	550.68
1884	214.37	1889	616.39
1885	454.74	1890	557.69
1886	493.74	1891	557.69
1887	557.19	1892	629.65
		1893	530.70
		1894	467.74

80 XI. Said Sophia M. Bristol never resided in Washington county nor in the State of Minnesota at any time nor was she within the State of Minnesota from March 1, 1883, until her death, in August, 1894, except temporarily, and that the whole period of time she spent in the State of Minnesota from March 1, 1883, until her death did not exceed one year.

XII. On or about the nineteenth day of October, 1894, the will of said Sophia M. Bristol was duly admitted to probate in and by the probate court of Ramsey county, in the State of Minnesota, and such proceedings were had in the matter of said estate that James Bristol, the executor named in said will, was duly appointed by said court as the executor of said last will and testament and of said estate, and the said James Bristol thereupon duly qualified as such executor and entered upon the discharge of his duties as such, and thereafter and on the eighteenth day of April, 1895, and within the time required by the order duly made by said probate court for filing claims against the estate of said Sophia M. Bristol, deceased, said claimant, Washington County, duly made and filed its verified claim in due form for all of the said taxes and the said penalties, together with interest upon the amount of said taxes and penalties for each year from and after the first day of March, in the year after the year in which said taxes were levied, as aforesaid.

XIII. That the said Sophia M. Bristol was and for more than fifteen years next prior to her death has been a resident and citizen of the State of New York, and said James Bristol, the executor above named, is now and for more than fifteen years last past always has been a resident and citizen of the State of New York.

XIV. The court further finds that all of the taxes hereinbefore mentioned were fairly and equally assessed on a fair valuation of the personal property of said Sophia M. Bristol, deceased, for each of the years hereinbefore mentioned, and that no part of said taxes has ever been paid.

81 As conclusions of law the court finds:

That the said claimant, Washington County, is entitled to judgment herein in its favor and against the estate of Sophia M. Bristol, deceased, for the sum of sixty-four thousand six hundred eighty-four and $\frac{78}{100}$ dollars ($64,684.78), being the amount of said taxes and said penalties, together with the costs and disburse-

ments, to be taxed, and that said claim of said amount is a just and valid claim against the estate of Sophia M. Bristol, deceased.

Let judgment be rendered accordingly.

WM. LOCHREN, *Judge.*

(Endorsed:) Filed findings and order for judgment. Filed July 19th, 1898. Henry D. Lang, clerk.

The foregoing is amended as settled by the court yesterday.

BUNN & HADLEY,
Att'ys for Def't.

7, 19, '98.

82 Thereafter and on the same day the following judgment was entered of record in said cause, to wit:

83 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1898.

JUNE 29TH, 1898.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

In re Claim of Washington County, Minnesota.

It is therefore considered, ordered, and adjudged—

That the County of Washington, the claimant in this case, do have and recover of and from the estate of Sophia M. Bristol, deceased, the sum of sixty-four thousand six hundred eighty-four dollars and seventy-eight cents ($64,684.78), so found to be due by the court, and that said sum of sixty-four thousand six hundred eighty-four dollars and seventy-eight cents ($64,684.78) is a just and valid claim against the estate of Sophia M. Bristol, deceased, in favor of said Washington County, besides the costs and disbursements herein to be taxed.

WM. LOCHREN, *Judge.*

It is hereby stipulated that the above and foregoing may stand as the judgment in the above-entitled proceeding in the place of the judgment heretofore entered, and that the above and foregoing may be entered *nunc pro tunc* as of June 29th, 1898.

BUNN & HADLEY,
Att'ys for Defendant.

(Endorsed:) Judgment. Filed July 19th, 1898. Henry D. Lang, clerk.

83¼ And thereafter, on the 1st day of July, the following stay was entered of record in said cause, to wit:

83½ United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1898.

FRIDAY MORNING, *July 1st*, 1898.

Court opened pursuant to adjournment.

Present: Hon. Charles F. Amidon, judge; Hon. Robert G. Evans, U. S. district attorney; Hon. R. T. O'Connor, U. S. marshal; Henry D. Lang, clerk.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased. *In re* Claim of Washington County, Minnesota. E. Law. 1096.

On application of the respondent herein, it is hereby ordered that the issuance of execution upon the judgment rendered in the above-entitled action on the 29th day of June, 1898, and all proceedings for the enforcement of said judgment are hereby stayed for forty-two (42) days from this date for the purpose of giving the respondent an opportunity to settle the bill of exceptions and move for a new trial and take such other proceedings as they may be advised.

Dated St. Paul, July 1, 1898.

WM. LOCHREN, *Judge.*

84 And on the same day the following bill of exceptions was filed of record in said cause, to wit:

85 United States Circuit Court, District of Minnesota, Third Division.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

In re Claim of Washington County, Minnesota.

Bill of Exceptions.

The above-entitled action came on duly for trial at the June, 1896, term of the above court, held at St. Paul, on the twenty-fourth day of August, 1896. Messrs. Clapp & Macartney, L. L. Manwaring, and George H. Sullivan appeared as attorneys for the claimant, Washington County, and Messrs. C. W. Bunn and Emerson Hadley appeared as attorneys for James Bristol, executor of the estate of Sophia M. Bristol, deceased. It was duly stipulated that this action should be tried by the court without a jury.

"United States Circuit Court, District of Minnesota.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

In re Claim of Washington County.

It is hereby stipulated between the parties hereto as follows:

That the duplicate tax-lists for the city of Stillwater were duly certified by the county auditor and were duly delivered by said

county auditor to the county treasurer of said county for each of the years from 1883 to 1894, inclusive, and that they contain a tax assessed against Sophia M. Bristol upon personal property in the respective amounts set forth in the complaint herein for the respective years therein enumerated, and that they also give the assessed valuation of the personal property of the said Sophia M. Bristol upon which said taxes are so assessed and the rate of the tax assessed upon the property in the city of Stillwater, in said county, that being the district where said property was assessed, in the number of mills levied on each dollar of property, at the assessed
86 valuation for each of said years, as stated in the following schedule, to wit:

Year.	Rate.	Valuation.	Tax.
	Mills.		
1883	26.9	17,900	481.51
1884	26.66	184,900	4,287.40
1885	26	174,900	4,547.40
1886	26	189,900	4,937.40
1887	29	192,137	5,571.97
1888	28	196,672	5,506.82
1889	34	181,292	6,163.93
1890	31	179,900	5,576.90
1891	31	179,900	5,576.90
1892	35	179,900	6,296.50
1893	30	179,900	5,397.00
1894	26	179,900	4,677.40

and this stipulation shall have the same force and effect as the introduction of said tax duplicates in evidence.

It is further stipulated that said taxes were all assessed under the heading 'Credits other than that of bank, banker, broker, or stock jobber,' and that said assessments were each in fact based upon credits due said Sophia M. Bristol on promissory notes of various persons residing in Washington county and other counties in Minnesota payable to her order, secured by mortgages on real estate situate in Washington county and other counties in the State of Minnesota. Said notes were all made payable at the office of William M. McCluer or Charles M. McCluer at the city of Stillwater; that the assessor for the county of Washington for the year 1887 was A. Frederick; that he made up a list of the property assessable in that city and fixed the valuation thereon, and on August 10th, 1887, delivered the assessment books to the county auditor of Washington county, Minn.

87 That the assessment book for said year 1887, which contained the assessment of property in the city of Stillwater, included in which was the assessment against Sophia M. Bristol of

$192,337.00 for 'Credits other than that of bank, banker, broker, or stock jobber,' was not sworn to by the assessor, as provided in section 41 of chapter 11 of the General Statutes of Minnesota for the year A. D. 1878, or at all; that the blank form of oath of the assessor was made out and attached to said assessment book and signed by said assessor, A. Frederick.

That no part of any of said taxes so shown upon said several tax duplicates have ever been paid.

That Cyrus Jefferson was for more than fifteen years prior to his death a resident and citizen of the State of New York; that he died in the month of November, A. D. 1883, and that for 14 years prior to his death he had loaned money upon notes of various parties residing in Minnesota, payable to his order, and taken as security mortgages upon real estate in Washington county, Minn, and also to a less extent in other counties in Minnesota adjoining Washington county.

That in making these loans William M. McCluer, a resident of Stillwater, in Washington county, acted as agent for said Cyrus Jefferson; that from 1875 until the death of the said Jefferson said McClure as his agent had authority to and did carry on a very considerable business in loaning money secured by mortgages on real estate in said counties; that the principal and interest of such loans were paid to and collected by him, and such accumulations of principal and interest was paid and collected and reloaned and reinvested by said McCluer upon like securities, so that the same was kept and remained so invested during all of said time, and was not returned to said Jefferson except such money as said Jefferson had drawn from time to time to pay his debts and living expenses.

That prior to May 1st, 1883, said McCluer, under the direction of said Jefferson, loaned to various parties in Washington county,
Minn., sums aggregating eighteen thousand dollars ($18,000),
88 taking notes therefor, secured by mortgage in like manner,
as above set forth, except that the notes and mortgages were payable to Sophia M. Bristol; that on the 18th day of December, A. D. 1883, the notes and mortgages then unpaid that had been taken by said Cyrus Jefferson, through his said agent, William M. McCluer, including both those standing in the name of Cyrus Jefferson and those in the name of Sophia M. Bristol, were indorsed and assigned to said Sophia M. Bristol as her share in the estate of her father, the said Cyrus Jefferson; that thereupon she employed William M. McCluer and Charles M. McCluer as her agents at Stillwater, and, in addition to their general authority to collect and reloan the funds of said estate, as hereinafter stated, gave them a power of attorney authorizing and empowering them or either of them to satisfy and discharge or sell and assign all mortgages then or thereafter of record in her name in the States of Minnesota and Wisconsin; that she left said notes and mortgages in the possession of said Wm. M. McCluer and Chas. M. McCluer, and as her agents they had authority to make collections of loans, both interest and principal, as they became due upon said notes, and to satisfy the mortgages when they were paid; that they also had, in addition to said power of attorney, authority

to and did invest and reloan on similar securities such of the proceeds of said collections, of both principal and interest, as said Sophia M. Bristol did not direct them to remit to her or otherwise pay upon her order, taking promissory notes, payable to the order of Sophia M. Bristol, at their office in Stillwater, Minn., secured by mortgages upon lands in Minnesota, principally in Washington county; that in March, 1885, all the said notes then unpaid, including both those received from her father's estate and those taken afterwards in her name, were delivered by said William M. McCluer and Charles M. McCluer to said Sophia M. Bristol, and from that time on the notes were kept in the possession of said Sophia M. Bristol, at her residence, in Wyoming county, New York, but the mortgages securing such notes and other notes subsequently taken were recorded in the respective counties where the mortgaged property was situated, and thereafter always remained in the
89 possession of Wm. M. McCluer and Charles M. McCluer, said agents, at their office, in said Stillwater, and after the death of William M. McCluer, which occurred in August, 1890, in the possession of said Charles M. McCluer, at Stillwater, Minn.

That the said Wm. M. McCluer and Chas. M. McCluer continued as agents for said Sophia M. Bristol, collecting money becoming due upon said notes and making loans in her name, sometimes under the direction of James Bristol, her husband, but generally upon their own judgment; that they remitted money to Sophia M. Bristol when she called for the same, and what was not required by her was invested in new loans, as aforesaid.

That said Sophia M. Bristol did receive from the proceeds of said collections, at various times, large sums of money through said agents, and all moneys collected were always subject to be sent to her or paid out in any way she should order.

That whenever a new loan was made after March, 1885, the note was taken by said McCluers and sent by them to said Sophia M. Bristol and kept in her possession, at her home, in the State of New York, and the mortgage was retained by her said agents, at Stillwater; that when a note became due, or was about to be paid, or was required for renewal or foreclosure or mortgage, the note was forwarded by said Sophia M. Bristol to her said agents, and in some cases said agents made collections and sent for the note, and the same was forwarded to them to be delivered to the maker.

That after the death of William M. McCluer the said Chas. M. McCluer acted as sole agent in the same way that the two had acted previously, except that on October 31, 1890, said Sophia M. Bristol executed a written revocation of the power of attorney of said Charles M. McCluer, above referred to; that said revocation was mailed by said Sophia M. Bristol, at Gainesville, New York, to said Charles M. McCluer on October 31st, 1890, and received by him in due course of mail a few days thereafter; that said Chas. M. McCluer was then directed by said Sophia M. Bristol to file said revocation in the office of the register of deeds of said Washington county, but he failed to do so, and either lost or destroyed the same.

90 That thereafter and in October, 1893, a second revocation of said power of attorney was made by said Sophia M. Bristol and then forwarded to said Charles M. McCluer, and the same was recorded in the office of the register of deeds in said Washington county on the 14th day of February, A. D. 1893.

That the said Charles M. McCluer continued until his death, in October, 1894, as the agent of said Sophia M. Bristol to collect moneys and reloan as theretofore, except that after the revocation of said power of attorney as aforesaid he had no authority to satisfy mortgages or assign the same, and such papers were forwarded by said McCluer to said Sophia M. Bristol for execution and were executed and returned to said McCluer for delivery.

It is admitted that the taxes sought to be recovered in this proceeding were assessed upon the said loans made by the said William M. McCluer and Charles M. McCluer as aforesaid and the credits due said Sophia M. Bristol thereon, and that she had no other taxable property in the county of Washington.

That nearly all the personal property which said Sophia M. Bristol received from her father's estate consisted of the loans made by said McCluers for said Jefferson as aforesaid.

That during each of the years from 1883 to 1894, inclusive (except the year 1893), the assessor of the city of Stillwater, in the month of May in each of said years, called upon said McCluers and requested them to list and make out, as agents of said Sophia M. Bristol, upon the blank form furnished by said assessor, a statement of all personal property of said Sophia M. Bristol, their principal, and under their, McCluers', control; that the said McCluers and each of them refused to list the same or to furnish a statement thereof, and during all the time herein mentioned Sophia M. Bristol was a resident and citizen of the town of Gainesville, Wyoming county, New York, and was not within the State of Minnesota except temporarily, and in all not to exceed six months during said time.

91 That at all the times hereinbefore mentioned each of said McCluers until their death resided in Stillwater, Minnesota, and had their office and place of business at said place, where said loans were made and made payable and paid.

It is also admitted that during all the time hereinbefore mentioned the said James Bristol has been and now is a resident and citizen of the State of New York, and he is the same person who is executor herein of the last will and testament of Sophia M. Bristol.

That at all the times hereinbefore mentioned the said McCluers, and after the death of William McCluer the said Chas. M. McCluer, kept all the money received and collected by them or either of them hereinbefore referred to in their bank account at Stillwater, Minnesota, in their own name or names, subject to their check, so long as the same remained in their hands.

It is further stipulated that either party may upon the submission

of this case object to the materiality of any statement herein contained.

It is stipulated by and between the parties hereto that, in addition to the foregoing statement of facts agreed to herein, the plaintiff, Washington County, may offer in evidence the deposition of George C. Otis, taken in certain proceedings in the probate court of Washington county, Minnesota, entitled In the matter of the last will and testament of Cyrus Jefferson, upon the allowance of the claim of Washington county for taxes for the years 1882 and 1883, which taxes were assessed to said Cyrus Jefferson, deceased, on account of the loans made by said Wm. M. McCluer as agent for said Cyrus Jefferson, as shown in the foregoing stipulation, a copy of which is hereto attached, marked 'Exhibit A;' that the defendant objects to the admission of said deposition in evidence on the ground that the same is incompetent, irrelevant, and immaterial, but stipulates that copy may be offered with the same force and effect as if the original deposition was produced from the files of the probate court properly identified and offered.

92 It is further stipulated that the plaintiff may also offer in evidence the statement hereto attached to the testimony of Wm. M. McCluer, marked 'Exhibit B,' given before the probate court in the proceeding aforesaid, and that the same shall be of the same force and effect as if plaintiff produced a witness who testified that he was present at the said trial in the probate court in Washington county in 1885 and heard William M. McCluer testify to the matters stated in Exhibit B, and of no other or greater effect; that the defendant objects to the introduction of said statement in evidence, on the ground that the same is incompetent, irrelevant, and immaterial.

That the court upon the hearing of this case shall rule upon the admissibility of said deposition, and also said statement of the evidence of William M. McCluer, and either party may take an exception to the ruling of the court.

It is further stipulated that the witnesses named in the statement hereto attached, marked Exhibit 'C,' were duly sworn, and that the taxes mentioned by said witnesses were assessed and paid for the years testified, and each testified as therein stated; that said Exhibit 'C' may be offered in evidence with the same effect as if the said witnesses were each produced in court and sworn on behalf of said estate and testified as stated in said Exhibit 'C,' and that said Washington County may object to the reception of any part of the evidence contained in said statement on the ground that the same or any part thereof is irrelevant, incompetent, or immaterial, and that the court, upon the hearing of this cause, shall rule upon the admissibility of the evidence contained in said statement, or any part thereof, and that either party may take an exception to the ruling of the court upon such objection.

Entering into this stipulation shall not be deemed, as to the county

of Washington, any waiver of its rights to insist upon the remanding of this cause to the probate court of Ramsey county.

93 LOUIS L. MANWARING,
Attorney for Claimant.
BUNN & HADLEY,
Att'ys for Def't."

CLAPP & MACARTNEY,
Of Counsel for Claimant.

Ramsey county. Dated Feb'y 10, 1896.

The deposition of George C. Otis, which was taken in certain proceedings in the probate court of Washington county, was then offered in evidence by the claimant, and admission of the same in evidence was objected to by the defendant on the ground that it was incompetent, irrelevant, and immaterial; which objection was sustained; to which claimant excepted.

Plaintiff further offered in evidence the statement of testimony of William M. McCluer given before the probate court of Washington county, and the same was objected to by the defendant on the ground that the same was incompetent, irrelevant, and immaterial, and objection was sustained by the court.

To which claimant excepted.

The defendant then offered in evidence the deposition- of certain witnesses tending to prove that Sophia M. Bristol had paid taxes upon the property referred to in the stipulation at her home at Gainesville, in the State of New York, during the same period for which taxes sought to be recovered in this action were levied. Said depositions were objected to by the claimant on the ground that they were immaterial, and said objection was sustained.

No further testimony being offered, the case was closed, and thereupon questions of law were argued to the court. The counsel for the defendant claimed, among other things, that the assessment, levy, and collection of the taxes referred to in the complaint herein was in violation of the Constitution of the United States, in that thereby a citizen of New York was deprived of the privilege and immunity granted citizens of the State of Minnesota, and also
94 that thereby Sophia M. Bristol and her executor were deprived of their property without due process of law.

The foregoing and attached bill of exceptions being duly presented to this court on the 18th day of July, A. D. 1898, that being one of the days of the June, A. D. 1898, general term, the same term at which said action was determined, and the same being by me duly examined and found conformable to the truth of the case and containing all the evidence offered at said trial, are hereby allowed, signed, and made a part of the record thereof.

WM. LOCHREN,
Judge of the District Court, State of Minnesota.

(Endorsed:) Bill of exceptions. Filed July 19th, 1898. Henry D. Lang, clerk.

95 Thereafter and on August 1st, 1898, the following assignment of errors was filed of record in said cause, to wit:

96 Circuit Court of the United States, District of Minnesota, Third Division.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

In re Claim of Washington County, Minnesota.

Now comes James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, and alleges that in the above-entitled cause the above-named court in its decision and judgment has committed a manifest error against the estate of Sophia M. Bristol and against this defendant, as will more fully appear upon the record of the proceedings in said cause, and said defendant, James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, prays a writ of error to the Supreme Court of the United States in accordance with law.

Dated August 1st, 1898.

JAMES BRISTOL,
As Executor of the Last Will and Testament of Sophia M. Bristol, Deceased,
By C. W. BUNN AND
EMERSON HADLEY,
His Attorneys.

97 Circuit Court of the United States, District of Minnesota, Third Division.

In the Matter of the Estate of SOPHIA M. BRISTOL, Deceased.

In re Claim of Washington County, Minnesota.

Assignment of Errors.

Now comes James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, and assigns the following errors in the judgment of this court in the above-entitled action, namely:

1. The court in and by said judgment held that the taxes assessed and levied by the county of Washington, State of Minnesota, against Sophia M. Bristol, a citizen and resident of the State of New York, in the years 1883 to 1894, inclusive, upon property situate in the State of New York, which are sought to be collected in this action, were valid taxes, and the enforcement of the same does not violate the provisions of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law.

2. The court in and by said judgment held that the taxes assessed and levied by the county of Washington, State of Minnesota, against Sophia M. Bristol, a citizen and resident of the State of New York,

in the years 1883 to 1894, inclusive, upon property situate in the State of New York, were valid taxes and did not violate the provisions of the Constitution of the United States, which provides that the citizen- of each State shall be entitled to all privileges and immunities of citizens in the several States.

3. The court in and by said judgment held that the taxes assessed and levied by the county of Washington, State of Minnesota, against Sophia M. Bristol, a citizen and resident of the State of New York, in and for the years 1885 to 1894, inclusive, upon property
98 situate in the State of New York, were valid taxes, and the enforcement of the same does not violate the provisions of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law.

4. The court in and by said judgment held that the taxes assessed and levied by the county of Washington, State of Minnesota, against Sophia M. Bristol, a citizen and resident of the State of New York, for the years 1891 to 1894, inclusive, upon property situate in the State of New York were valid taxes, and the enforcement of the same does not violate the provisions of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law.

5. The court in and by said judgment held that the State of Minnesota may assess, levy, and collect taxes upon property situated outside of the State of Minnesota belonging to a person not a resident of the State of Minnesota, and that such assessment, levy, and collection were not in violation of the Constitution of the United States.

6. The court in and by its eighth finding of fact found that the situs of the indebtedness due Sophia M. Bristol, deceased, upon which the taxes in controversy were assessed, at the times when said taxes for the years 1883 to 1894, inclusive, and each of them were assessed, was in the city of Stillwater, in the county of Washington and State of Minnesota, whereas the stipulated facts show that the situs of said indebtedness was at each of said times at the home of Sophia M. Bristol, in the State of New York.

7. The said court in and by its said judgment held that the situs of the property of Sophia M. Bristol, on which the taxes in a controversy were assessed and levied, was in Washington county, State of Minnesota, at the several times when said taxes in and for the year- 1883 to 1894, inclusive, and each of them were assessed, whereas the stipulated facts show that the situs of said property taxed was not in the State of Minnesota, but in the State of New York.

99 8. The court in and by its said judgment held that the situs of the credits of Sophia M. Bristol, on which the taxes in question were assessed, was in Washington county, Minnesota, after March, 1885, when the notes evidencing the same were in the possession of said Sophia M. Bristol at her home in New York State.

9. The court in and by its said judgment held that the situs of the credits of Sophia M. Bristol, on which the taxes in question were

assessed, was at the home of her agent in Stillwater, Washington county, Minnesota, after November, 1890, when the authority of her said agent to satisfy and assign mortgages had been revoked and when the notes evidencing said credits were in the possession of Sophia M. Bristol at her home in the State of New York.

Dated August 1st, 1898.

C. W. BUNN &
EMERSON HADLEY,
Attorneys for James Bristol, as Executor of the Last Will and Testament of Sophia M. Bristol, Deceased.

(Endorsed:) Petition for writ of error and assignment of errors. Filed August 1st, 1898. Henry D. Lang, clerk.

100 And afterwards, on the 1st of August, 1898, the following bond was filed of record in said cause in words and figures as follows, to wit:

101 Know all men by these presents that we, R. C. Jefferson and James Kasson, both of St. Paul, Minnesota, are held and firmly bound unto the County of Washington, State of Minnesota, in the full and just sum of twenty-five thousand ($25,000.00) —, to be paid to the said County of Washington, its attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, in the circuit court of the United States, district of Minnesota, third division, in a suit pending in said court and entitled In the matter of the estate of Sophia M. Bristol, deceased; *In re* claim of Washington county, judgment was rendered against the said estate of Sophia M. Bristol, deceased, and against James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, and the said James Bristol, executor of the last will and testament of Sophia M. Bristol, deceased, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation, directed to the said County of Washington, State of Minnesota, citing and admonishing it to be and appear at the Supreme Court of the United States within thirty (30) days from the date thereof:

Now, the condition of the above obligation is such that if the said James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, shall prosecute said writ of error to effect and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

R. C. JEFFERSON. [SEAL.]
JAMES KASSON. [SEAL.]

Sealed and delivered in presence of—
L. J. GATES.
O. T. MORRIS.

102 STATE OF MINNESOTA, } ss:
County of Ramsey, }

R. C. Jefferson and James Kasson, being each duly sworn, each for himself says that he is a freeholder of the State of Minnesota and has property of the value of fifty thousand dollars over and above his debts and exemptions.

R. C. JEFFERSON.
JAMES KASSON.

Subscribed and sworn to before me this 29th day of April, 1898.
[NOTARIAL SEAL.]
L. J. GATES,
Notary Public, Ramsey Co., Minn.

Approved by—
WM. LOCHREN, *Judge.*

Upon filing the writ of error referred to above the same may act as a supersedeas in said action.

WM. LOCHREN, *Judge.*

(Endorsed:) Supersedeas bond on writ of error. Filed August 1st, 1898. Henry D. Lang, clerk.

103 And thereafter, on the same day, the following writ of error was issued out of and under the seal of said court, as follows, to wit:

104 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable judges of the circuit court of the United States for the district of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said circuit court, before you or some of you, between Washington County, State of Minnesota, claimant, and James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, defendant, which proceedings in the said court are entitled "In the matter of the estate of Sophia M. Bristol, deceased; *In re* claim of Washington County, Minnesota," a manifest error hath happened, to the great damage of the said defendant, James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, as by his complaint appears, we, being willing that error, if any hath been, should be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein given, *that* then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on or before thirty (30) days from the date hereof, in the said Supreme Court, that, the record and proceedings aforesaid being inspected, said Supreme Court may cause further to be done therein to correct that error what of right

and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court, this 1st day of August, in the year of our Lord one thousand eight hundred and ninety-eight.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

105 HENRY D. LANG,
Clerk of the Circuit Court of the United States,
District of Minnesota.

Allowed by—
WM. LOCHREN,
Judge of the District Court of the United States,
District of Minnesota.

106 [Endorsed:] Entered. 1096. E. Law. U. S. circuit court, district of Minnesota, third division. James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, plaintiff in error, *vs.* Washington County, Minnesota, defendant in error. Writ of error from U. S. Supreme Court. Filed August 1st, 1898. Henry D. Lang, clerk.

107 UNITED STATES OF AMERICA, *ss:*

To Washington County, State of Minnesota, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Minnesota, third division, wherein James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error and against the estate of Sophia M. Bristol, deceased, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 1st day of August, in the year of our Lord one thousand eight hundred and ninety-eight.

WM. LOCHREN,
Judge of the District Court of the United States, District of Minnesota.

Due service of the above citation is hereby admitted this 1st day of August, A. D. 1898.

CLAPP & MACARTNEY,
L. L. MANWARING,
Attorneys for Washington County, State of Minnesota.

108 [Endorsed:] Entered. 1096. E. Law. U.S. circuit court, district of Minnesota, third division. James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, plaintiff in error, *vs.* Washington County, Minnesota, defendant in error. Citation. Filed August 1st, 1898. Henry D. Lang, clerk.

109 UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES, *District of Minnesota,* } *ss.*:

I, Henry D. Lang, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 109 pages, numbered consecutively from 1 to 109, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment, and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this fourth day of August, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and third year.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

HENRY D. LANG, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled 8, 4, '98. H. D. L.]

Endorsed on cover: Case No. 16,940. Minnesota C. C. U. S. Term No., 109. James Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, plaintiff in error, *vs.* Washington County, State of Minnesota. Filed August 15th, 1898.

WASHINGTON COUNTY, STATE OF MINNESOTA.

In Error to the Circuit Court of the United States, for the District of Minnesota.

BRIEF FOR PLAINTIFF IN ERROR.

Emerson Hadley,
C. W. Bunn,
Counsel for Plaintiff in Error.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 109.

JAMES BRISTOL, as Executor of the Last Will and Testament of SOPHIA M. BRISTOL, Deceased,

Plaintiff in Error,

vs.

WASHINGTON COUNTY, STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This is a writ of error to the Circuit Court of the United States for the District of Minnesota. The main question to be determined is whether certain taxes levied by the County of Washington, State of Minnesota, against a citizen and resident of the

state of New York on account of indebtedness held against residents of Minnesota secured by mortgage on lands in Minnesota, are valid taxes.

The case was tried in the Circuit Court on stipulated facts, which stipulation is incorporated in the bill of exceptions printed in the transcript, pages 47 to 53. The Circuit Court made findings of fact in substantial accordance with the stipulation, and these findings are printed in the transcript, pages 41 to 45.

The taxes in question were levied by the County of Washington during each of the years 1883 to 1894, inclusive, under the statutory heading which will be hereafter explained, "Credits, other than of bank, banker, broker or stock jobber." (Transcript, p. 43, findings, par. X). A schedule of the taxes and penalties showing the amount claimed for each year will be found in the findings (Transcript, p. 44-45). The judgment here for review was for $64,684.78, (Transcript, p. 46) and is rendered against the estate of Sophia M. Bristol, deceased.

Sophia M. Bristol was the person who was assessed. She was at all times a resident and citizen of New York and was never during the period in question within the State of Minnesota except temporarily (Findings, par. 1). Her father, Cyrus Jefferson, who died in November, 1883, was also a citizen and resident of New York and during the 14 years prior to his death he had loaned large sums of money to various persons residing in Minnesota upon their notes, payable to his order at Stillwater,

in Washington County, and secured by mortgages on real estate in Washington and adjoining counties in Minnesota. All these loans and investments were made and the notes and mortgages taken by and through William McCluer of Stillwater, who was the agent of Jefferson. McCluer during this time made the loans and took and retained the notes and securities, collecting and re-loaning principal and interest at Stillwater and kept said moneys invested as nearly as practicable, save as to such moneys as Jefferson drew from time to time to pay his debts and living expenses (Findings, par I). Jefferson during this time had also loaned $18,000.00 through McCluer, taking the notes and mortgages to his daughter, Sophia M. Bristol. After the death of Jefferson, on December 8, 1883, all his notes secured by mortgages in Minnesota passed to Sophia M. Bristol as her share of his estate. She thereupon employed said McCluer and one Charles M. McCluer (both residents of Stillwater) as her agents in and about said loaning business, giving to them all the authority William M. McClure had before exercised for her father and also giving them a written power of attorney to satisfy and sell mortgages. The agents continued to carry on the business, retaining moneys collected by them, the moneys in their hands being deposited in bank at Stillwater as their money to their credit (Findings, par. III).

In March, 1885, the method of conducting the business changed to this extent; that all the notes in the hands of the agents were then delivered to

Sophia M. Bristol, and all new notes thereafter taken were sent to Sophia M. Bristol and were always kept by her at her home in New York, but were payable as before at the office of her agents in Stillwater. All mortgages were still retained by the agents and the notes were sent the agents from time to time whenever required by them for the purpose of renewal, payment, collection, or foreclosure. The agents continued making loans in the name of Sophia M. Bristol, sometimes under the direction of James Bristol, her husband, but generally upon their own judgment, and remitted money to Sophia M. Bristol whenever she called for the same. What was not received by her was re-invested. Sophia M. Bristol received large sums of money at various times from said agents and all moneys in their hands were always subject to her order. (Findings, par. IV.)

In August, 1890, William M. McClure died and thereafter Charles M. McCluer continued to act as sole agent until in November, 1890, when Sophia M. Bristol revoked the power of attorney authorizing him to satisfy mortgages and thereafter executed satisfactions herself (Findings, par. V).

The business went on in this way until the death of Sophia M. Bristol in the month of August, 1894 (Findings, par. VI).

Sophia M. Bristol had no taxable property in Washington County during any of the years mentioned other than the loans and indebtedness which were secured by mortgage on lands in Minnesota and which were under the charge and management of her agents (Findings, par. VII).

The court finds that said loans acquired and had a *situs* for taxation in Stillwater, Washington County, Minnesota (Findings, par. VIII).

In October, 1894, the will of Sophia M. Bristol was duly admitted to probate in the probate court of Ramsey county, Minnesota, and James Bristol, the plaintiff in error, a citizen of New York, was appointed executor of the will and duly qualified (Findings, par. XII).

The plaintiff in error offered in evidence in the court below certain depositions which tended to prove that Sophia M. Bristol had paid taxes upon this same property at her home in Gainesville, in the State of New York the same years for which the taxes in question were levied. This evidence was objected to by the defendant in error as being immaterial and the objection was sustained (Bill of Exceptions, Transcript, p. 53).

During the years from 1883 to 1894 the County of Washington seems to have taken no steps for the collection and enforcement of the taxes, but on the 24th day of September, 1894, Sophia M. Bristol having died in the state of New York, and her will having been probated in that state, a petition was filed in the probate court of Ramsey county, Minnesota, for the probate of her will, in Minnesota. (Transcript, p. 1-2.) The will was in due course admitted to probate. Appraisers of the estate were appointed and James Bristol, the executor, returned to the probate court of Ramsey county an inventory of the estate of the deceased which had come to the executor in the state of Minnesota (Transcript, pp.

18-19). This inventory comprised real estate exclusively except 5 bonds of Stevens county, Minnesota, of $1,000.00 each. It will be noted that none of the indebtedness against which the taxes were assessed is comprised in the inventory.

The county of Washington then filed a claim in the probate court for these taxes, amounting to $64,684.78 (Transcript, pp. 20-23).

The executor filed an answer and objection to this claim setting up and expressly alleging and claiming that the tax levied was in violation of the Constitution of the United States in this; that thereby a citizen of New York is deprived the privileges and immunities granted to the citizens of the state of Minnesota; also that it deprives a person of property without due process of law, and that thereby private property is taken for public use without just compensation, and that the levy, assessment and collection of said tax is contrary to the Fourteenth Amendment of the Constitution of the United States (Transcript, pp. 23-25). The executor filed a petition to remove the controversy to the Circuit Court of the United States and thereupon it was so removed (Transcript, pp. 26-29).

In the Circuit Court a stipulation was filed waiving a jury and the cause was tried before the court. A repleader was ordered and formal pleadings setting forth the contention of the parties were filed (Transcript, pp. 30-34). In the answer of the executor he again plead and asserted that the assessment, levy and collection of said taxes was in violation of the Constitution of the United States, par-

ticularly of the Fourteenth Amendment, as being the enforcement of a law abridging the privileges and immunities of citizens of the United States, depriving a person of property without due process of law, and denying the equal protection of the law. Also the answer further plead that all the said taxes assessed prior to the year 1889 had been due and payable and the cause of action thereon accrued more than six years prior to the filing of the plaintiff's claim in the probate court, and therefore the taxes levied during the years 1883 to 1888 inclusive were barred by the statute of limitations of the State of Minnesota (Transcript, p. 34).

The writ of error is taken direct to this court from the Circuit Court under the provisions of section 5 of the act of March 3, 1891, "in any case that involves the construction or application of the Constitution of the United States" * * * "in any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

It is stipulated and found that the taxes in question were assessed against "personal property of said Sophia M. Bristol, deceased, consisting of 'credits other than that of bank, banker, broker or stock jobber,' and that said assessments were each in fact based upon credits due Sophia M. Bristol on promissory notes of various persons," etc. The effect of this finding and the nature of the taxes in question can be perfectly understood only by reference to the laws of Minnesota under which the assessments were made.

The law of Minnesota in the first place does not subject mortgages to *real estate* taxes. Under the statutes of Minnesota real estate whether incumbered or unincumbered is taxed against the owner of the fee, or equity of redemption, as land and at its full value without deduction for mortgages.

Section 1510 Minnesota Compiled Statutes, 1894, vol. 1, provides:

> "Personal property shall, for the purposes of taxation, be construed to include all goods, chattels, moneys, credits and effects, wheresoever they may be."

Section 1511 provides:

> "The term 'credits,' wherever used in this act, shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, *and all claims and demands secured by deed or mortgage, due or to become due.*"

Under section 1515 a resident agent is obliged to list separately and in the name of his principal all moneys and other personal property invested, loaned or otherwise controlled by him as agent or attorney on account of any other person; and also all moneys deposited subject to his order, check or draft, and credits due from or owing by any person or persons.

Section 1524 provides for valuation by the assessor and for the different items making up the list of assessable property. Subdivision 22 of this section reads, "the amount of credits other than of bank, banker, broker or stock jobber." The findings and

stipulation in the record have reference to this provision and show that the assessment in question was an assessment on credits; that is, debts due from residents of Minnesota to Sophia M. Bristol.

Sections 1567, 1568 and 1569 provide for the collection of delinquent personal property taxes. It is not necessary as we conceive to quote these sections in full. Briefly stated they provide as follows: that the county treasurer shall make a list of all such delinquent personal property taxes and certify the same to the clerk of the district court of his county, and the clerk shall thereupon issue his warrants to the sheriff of the county directing him to collect, which he may do by distraint of sufficient goods and chattels belonging to the person charged with such taxes, if found within his county; if the sheriff shall be unable to collect he shall so return to the clerk of the court; the clerk shall then deliver a list to the board of county commissioners who may cancel such taxes as they are satisfied cannot be collected; thereupon after the adjournment of the board the list so revised is again filed with the clerk of the district court, who issues and delivers to the sheriff a citation to the person taxed to appear on the first day of the next general term of the district court to show cause why he shall not pay the tax and penalty; the statute provides for hearing and trial of objections in the district court and for the rendition of a personal judgment against the person taxed; and also provides that if the person be a non-resident so that the citation cannot be served, then an action may be commenced by issuing and

publishing a summons and by attachment as is provided with reference to other actions and proceedings of a civil nature; the action shall be commenced and maintained in the name of the county against the person charged with such tax (Section 1569).

Section 1623 provides as follows;

> "The taxes assessed upon real property shall be a lien thereon from and including the first day of May, in the year in which they are levied, until the same are paid, but as between grantor and grantee, such lien shall not attach until the first day of January of the next year thereafter. The taxes assessed upon personal property shall be a lien upon the personal property of the person assessed from and after the time the tax books are received by the county treasurer."

This section and other Minnesota statutes have been recently considered in the Circuit Court of Appeals of the Eighth Circuit in the case of *State of Minnesota v. Central Trust Company of New York*, 94 Fed. Rep. 244, in which case the court held that under the laws of Minnesota personal property taxes were a lien, not only against the property taxed, but against *all the property* of the person taxed.

The Supreme Court of Minnesota in several cases has held that personal property taxes are under the Minnesota statutes taxes not against the property but against the person; that they are personal claims giving rise to a personal liability and personal judgment. They may be filed in probate court as claims against an estate. *In re Jefferson,*

35 Minn. 215, 217. Where several persons are joint owners of a credit or indebtedness the interest of each must be separately assessed against him and the whole credit or indebtedness cannot be taxed as a piece of real estate owned by joint owners might be taxed. The assessment of personality is a proceeding designed to reach the person ultimately, while the assessment of real estate is a proceeding against the land itself. *State v. Rand*, 39 Minn. 502, 510; see *Clarke v. County of Stearns*, 47 Minn. 552; *State v. Red River Valley Elevator Co.*, 69 Minn. 131.

The fact that taxes on personal property in Minnesota are a tax against the person, not the property, clearly appears from the holding of the Supreme Court of the state in the case of *State v. Moffett*, 64 Minn. 292, where the court sustains the constitutionality of a statute of Minnesota which provides that a person when making up the amount of credits he is required to list for taxation, may deduct from the gross amount of such credits the amount of all his *bona fide* indebtedness. What is really taxed is the balance of a person's credits over the amount of his debts. This statute is inconsistent with any other theory than that the tax is a personal tax.

A personal judgment was rendered in this case against the estate of the deceased, not a judgment merely enforcing a lien against the property taxed; this, too, where the record did not show that the property taxed was in existence or in the control of the probate court.

The questions in this case are as follows:

First. Whether the assessments in question were valid.

Second. Whether the rendition of a personal judgment was proper.

Third. Whether the statute of limitations had not at least barred any proceeding for the taxes of the years 1883 to 1888 inclusive.

ASSIGNMENTS OF ERROR.

The Court erred:

1. In holding that the said taxes were valid taxes, not violating the provisions of the fourteenth amendment to the Constitution of the United States, to the effect that no state shall deprive any person of life, liberty, or property without due process of law.

2. In holding that the said taxes were valid taxes, not violating the provisions of the fourteenth amendment to the Constitution of the United States, to the effect that no state shall make any law which shall abridge the privileges and immunities of citizens of the United States.

3. In holding that the state of Minnesota may assess, levy and collect taxes against a non-resident on account of debts due him from residents, and that such assessment, levy, and collection were not in violation of the Constitution of the United

States and particularly of the fourteenth amendment.

4. In holding that the situs of the indebtedness due Sophia M. Bristol, deceased, upon which the taxes in controversy were assessed, was for purposes of taxation in the city of Stillwater, State of Minnesota.

5. In holding that the situs of the credits of Sophia M. Bristol, on which the taxes in question were assessed, was Stillwater, Minnesota, after March, 1885, when the notes evidencing the same were in the possession of Sophia M. Bristol at her home in New York State.

6. In rendering a *personal* judgment against the estate of Sophia M. Bristol.

7. In holding that all remedy to collect taxes assessed during the years 1883 to 1888, inclusive, was not barred by the statute of limitations of Minnesota.

ARGUMENT.

I.

Jurisdiction of this Court.

The federal questions sought to be raised by the assignments of error were distinctly and repeatedly called to the attention of the trial court. As shown in the statement of facts the plaintiff in error distinctly raised and relied upon them in his pleadings. The jurisdiction of this court is settled, we think, by two recent cases: *Savings and Loan Society v. Multnomah County*, 169 U. S. 421, 423; *Dewey v. Des Moines*, 173 U. S. 193, 200-202.

II.

Were the assessments or any of them valid?

The learned District Judge decided this case on the authority of *Savings & Loan Society v. Multnomah County*, which held the Oregon statute taxing mortgages as real estate valid, although the owner resides in another state. The learned Judge remarks (Transcript, p. 40):

> "The fact that the Oregon statute taxes mortgages on land as real estate is of no importance and merely formal, as the case con-

> cedes that by the law of Oregon a mortgage of land conveys no legal title and creates only a lien or incumbrance for the security of the debt."

We very much misunderstand the Multnomah County case if this is true. If the fact that the Oregon statute taxed mortgages as land was purely "formal and of no importance," why did this court find it necessary to devote three pages of the opinion to an explanation of the Oregon statutes and to emphasis of the fact that under those statutes the debt was not taxed, the effect of the statute being to tax the land only. As shown by the court in the opinion (pp. 423-4-5) the Oregon statute provided that a mortgage should, "for the purposes of assessment and taxation be deemed and treated as land or real property;" that in any assessment of land against the owner the amount of the mortgage was deducted; that "no promissory note or other instrument of writing, which is the evidence of" (the debts secured by the mortgage) "shall be taxed for any purpose within this state." The court says on page 425:

> "Taking all the provisions of the statute into consideration, its clear intent and effect are as follows: The personal obligation of the mortgagor to the mortgagee is not taxed at all. The mortgage and the debt secured thereby are taxed, as real estate, to the mortgagee, not beyond their real cash value, and only so far as they represent an interest in the real estate mortgaged. The debt is not taxed separately, but only together with the mortgage; and is considered as indebtedness within the state for no other purpose than to ena-

ble the mortgagor to deduct the amount thereof from the assessment upon him, in the same manner as other indebtedness within the state is deducted. And the mortgagee as well as the mortgagor is entitled to have deducted from his own assessment the amount of his indebtedness within the state.

"The result is that nothing is taxed but the real estate mortgaged, the interest of the mortgagee therein being taxed to him, and the rest to the mortgagor. There is no double taxation. Nor is any such discrimination made between mortgagors and mortgagees, or between resident and non-resident mortgagees, as to deny to the latter the equal protection of the laws."

Again, the court said on pages 427-8:

"The state may tax real estate mortgaged, as it may all other property within its jurisdiction, at its full value. It may do this, either by taxing the whole to the mortgagor, or by taxing to the mortgagee the interest therein represented by the mortgage, and to the mortgagor the remaining interest in the land. And it may for the purposes of taxation, either treat the mortgage debt as personal property, to be taxed, like other choses in action, to the creditor at his domicil; or treat the mortgagee's interest in the land as real estate, to be taxed to him, like other real property, at its situs." *Firemen's Ins. Co. v. Commonwealth*, 137 Mass. 80, 81; *State v. Runyon*, 12 Vroom, (41 N. J. Law) 98, 105.

Again, on page 431 the court again dwells upon the Oregon statute, saying that it expressly forbids any taxation of the note or other instrument in writing which is the evidence of the debt, and with equal distinctness provides for the taxation, as real estate, of the mortgage interest in the land, saying further:

> "Although the right which the mortgage transfers in the land covered thereby is not the legal title, but only an equitable interest and by way of security for the debt, it appears to us to be clear upon principle, and in accordance with the weight of authority, that this interest, like any other interest legal or equitable, may be taxed to its owner (whether resident or non-resident) in the state where the land is situated, without contravening any provision of the Constitution of the United States."

The court explained the case of *State Tax on Foreign Held Bonds*, 15 Wall. 300, by saying that it became important to notice exactly what was there decided; that in that case the tax imposed, held to be invalid, was a tax on the interest due to the bondholders upon the bonds and not a tax upon the railroads or upon the mortgage thereof, or upon the bondholders solely by reason of their interest in that mortgage. The court disapproved of so much of the opinion in that case as holds that a mortgage is a mere security for a debt and cannot be treated by the state tax laws as an interest in land.

No one can read the opinion in the Multnomah County case without being impressed with the importance which this court gave in reaching its decision to the peculiar Oregon statute: without being convinced that the very gist of the decision, the fundamental reason which underlies it, is that the taxation in that case was a taxation of real estate and that a legislature has a right if it so chooses to regard the interest of a mortgagee in

land as real estate for the purposes of taxation.

But we have been careful in the statement of facts to show that in Minnesota the statute taxes first the whole interest in the land, including the mortgagee's interest, to the owner of the fee or equity; second, in addition taxes the *credit* or *indebtedness* due from mortgagor to mortgagee as a chattel; thus bringing this case squarely within the decision in the *Case of State Tax on Foreign Held Bonds*, 15 Wall. as that decision is explained and limited in the Multnomah County case.

It is one thing to hold that a state may tax a mortgage interest as real property, thus creating a claim which can be enforced only against the mortgage itself, and quite another thing to hold that a state can levy a personal assessment against a non-resident, which results, not in a lien upon his property situated in the state enforceable only against that property, but in a personal debt which may be sued and result in a personal judgment against him. This latter is the kind of tax we are considering and the kind of judgment brought here for review. The difference between the Multnomah County case and this case is wide and radical and cannot be regarded as "of no importance and merely formal." The first kind of tax is within the power of the state because it results in subjecting the property of non-residents within the state to the lien of taxes; the second is beyond the power of the state because it is an attempt to exercise a taxing power and jurisdiction over the per-

sons of non-residents. The difference and distinction is vital and we regard the decision of this court in the Multnomah County case, and particularly the reasoning of the opinion, as the best of authority for saying that the tax here in question is invalid.

It will be noted that in the Multnomah County case this court was careful to show and to state that the statute of Oregon did not result in double taxation; while here it is plain that the statute of Minnesota does result in double taxation. While double taxation is not necessarily in conflict with the Constitution of the United States, it is important to point out that our contention does not deprive the state of any right which it ought in equity and justice to have, and does not permit any property in the state to escape taxation; for these credits have been once assessed against the Minnesota owners of the lands on which they were secured.

Unless the Multnomah County case can be considered as overruling the previous decisions of this court, we think the question here at issue is settled by those decisions.

In *McCulloch v. Maryland*, 4 Wheat. 316, 329, Chief Justice Marshall delivering the opinion, said:

> "All subjects over which the sovereign power of a state extends are objects of taxation, but those over which it does not extend are upon the soundest principles exempt from taxation. This proposition may almost be pronounced self-evident."

In the case of *Railroad Co. v. Jackson*, 7 Wall. 262, it was held that the State of Pennsylvania could impose no tax upon railroad bonds held by non-residents. The reason given by Justice Nelson for the decision has been criticised (and properly so) in *Case of State tax on Foreign-held Bonds*, 15 Wall. 300, but the decision was there approved.

In *St. Louis v. Ferry Co.*, 11 Wall. 423, the state of Missouri attempted to tax the ferry boats of the Ferry Company plying between St. Louis and the opposite shore of the Mississippi in the state of Illinois. The boats were habitually kept in Illinois except when they touched at St. Louis in prosecution of the business of the company. Held, that the boats were not taxable in Missouri. Justice Swayne, delivering the opinion, said:

> "Where there is jurisdiction neither as to person nor property the imposition of a tax would be *ultra vires* and void. If the legislature of a state should enact that the citizens or property of another state or country should be taxed in the same manner as the persons and property within its own limits and subject to its authority or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action."

So the court said in *Erie Railroad Co. v. Pennsylvania*, 153 U. S., 646;

> "No principle is better settled than that the power of a state, even its power of taxation in

respect to property is limited to such as is within its jurisdiction."

This court said in the *Case of State Tax on Foreign-held Bonds,* 15 Wall. 300:

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, excises, or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though as applied to them, the taxation may be exercised in a great variety of ways. It may touch property in every shape, in its natural condition, in its manufactured form, and in its various transmutations. And the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the federal constitution, the power of the state as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction."

Again, the court said in that case:

"Corporations may be taxed, like natural persons, upon their property and business. *But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors is simply to misuse terms. All the property there can be in the nature of things in debts of cor-*

porations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications, but no number of authorities, and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement.

"The bonds issued by the railroad company in this case are undoubtedly property, but property in the hands of the holders, not proprety of the obligors. So far as they are held by non-residents of the state they are property beyond the jurisdiction of the state."

These principles are left unmodified by the Multnomah County case and are controlling here unless the *Case of State Tax on Foreign-held Bonds* is to be overruled.

Since the decision in the Multnomah County case this court has considered the case of *Dewey v. Des Moines*, 173 U. S., and said (p. 203):

"The jurisdiction to tax exists only in regard to persons and property or upon the business done within the state, and such jurisdiction cannot be enlarged by reason of a statute which assumes to make a non-resident personally liable to pay a tax of the nature of the one in question. All subjects over which the sovereign power of the state extends are objects of taxation. Cooley on Taxation, 1st ed., pp. 3, 4; Burroughs on Taxation, sec. 6. The power of the state to tax extends to all objects within the sovereignity of the state. (Per Mr. Justice Clifford, in *Hamilton Company v. Massachusetts*, 6 Wall. 632, at 638). The power to tax is however limited to persons, property and business within the state, and it

cannot reach the person of a non-resident. *State Tax on Foreign-held Bonds,* 15 Wall. 300, 319. In Cooley on Taxation, 1st ed., p. 121, it is said that 'a state can no more subject to its power a single person or a single article of property whose residence or legal situs is in another state, than it can subject all the citizens or all the property of such other state to its power.' These are elementary propositions, but they are referred to only for the purpose of pointing out that a statute imposing a personal liability upon a non-resident to pay such an assessment as this oversteps the sovereign power of a state."

Judge Cooley in his work on Taxation says (p. 15):

"But debts owing to foreign creditors by either corporations or individuals are not the subject of taxation. The creditor cannot be taxed because he is not within the jurisdiction and the debts cannot be taxed in the debtor's hands through any fiction of the law which is to treat them as being for this purpose the property of the debtors. They are not property of the debtors in any sense; they are the obligations of the debtors and only possess value in the hands of the creditors. With them they are property, but to call them property in the hands of the debtors is simply to misuse terms."

On page 42 he says:

"It has already been seen that persons and property not within the territorial limits of a state cannot be taxed by it. In such a case the state affords no protection and there is nothing for which taxation can be an equivalent. But where a person is a resident within a state his personal property in contemplation of law accompanies him and he may be required to pay taxes upon it wherever it is

situate, while the real estate of a non-resident is always taxable where it is. It is competent also for any state to provide that tangible personal property situate within it may be taxed there irrespective of the residence of the owner and sometimes state laws provide for such taxation."

On page 65 he says:

"To tax in one state contracts owned in another is held to impair their obligation and consequently to be inadmissible even though they are made and payable in the state imposing the tax and are secured by mortgage in that state."

It is to be observed and borne in mind that if this tax is sustained the result is not only double but treble taxation. First, taxation of the whole value of the land against the owner; second, taxation under the law of Minnesota of the mortgagee's loan; third, taxation under the law of New York of the same interest. The latter taxation has been held good in *Kirtland v. Hotchkiss,* 100 U. S. 491, and is authorized under the laws of New York of 1883, chap. 329, which reads as follows:

"All debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held, shall be deemed for the purposes of taxation personal property within this state, and shall be assessed as such to the owner or owners thereof in the town, village or ward in which such owner or owners shall reside at the time such assessment shall be made."

See *Darrow v. Coleman,* 119 N. Y. 137.

It will also be noted that the statute of Minne-

sota (sec. 1510) authorizes taxation of "all moneys at interest either within or without this state, due the person to be taxed."

It is rather curious that these taxes had been in arrears from 1883 to 1894 and apparently no effort made to collect them. Then Sophia M. Bristol died, and owning real estate in Minnesota her will was probated there. The county came in and proved an alleged indebtedness against her as a claim against her estate. Suppose she were alive, how could the county collect its alleged taxes in that case? If she never came into the state of Minnesota she could not be served personally with process there. Could the county have gone to the state of New York and succeeded in the courts of that state or in the federal courts in maintaining an action against her? Could the county have brought a suit in Minnesota and obtained jurisdiction by publication and attachment of her indebtedness against the Minnesota mortgagors, represented as it was by promissory notes? How could it seize such indebtedness? How could it bring it under the jurisdiction of the courts in Minnesota? The courts of that state at most could have obtained no jurisdiction except to the extent of some tangible property in that state seized by process. *Pennoyer v. Neff*, 95 U. S. 714; *Mexican Central Railway Co. v. Pinkney*, 149 U. S. 194, 209.

If there is a right to levy this tax there must be some manner of collecting it. Unless some property of Mrs. Bristol could have been seized in Minnesota collection could not have been enforced in

that state; *and unless the laws of that state and the assessment thereunder created a good personal claim against her* the county could not have taken the claim to New York and maintained a suit against her in the courts of that state; nor could the county have maintained any suit in Minnesota except to enforce a lien on the very property taxed. The practical impossibility of enforcing the alleged claim under ordinary circumstances, under any known rules of law and practice is a strong argument to show that no valid claim existed.

III.

Neither the state of Minnesota, nor any exercise of the taxing power under its authority, could create a valid personal claim against this non-resident. Any taxation against her in Minnesota could be enforced as a lien against the very property taxed only, and the court at least erred in rendering a personal judgment. This we think is settled by *Dewey v Des Moines,* 173 U. S. 193. That case related to a piece of land in Des Moines, but the rule would have been the same if the taxation had been upon Dewey's horse in Des Moines, or upon a debt which he held against a resident of Des Moines. The language of the court in *Tappan v. Merchants' National Bank,* 19 Wall. 490, must be construed with reference to the facts in that case, which show that the state authorities were attempt-

ing to enforce a tax only against the property itself which was taxed.

It is true no judgment except a personal one could be entered in this case. The proceeding was commenced on the theory that the taxes were a personal claim against Sophia M. Bristol and after her death against her representatives---and there are not sufficient allegations in the complaint to sustain an action *in rem* to enforce a claim against the property. It is not alleged or found that the taxed property was in court or in existence.

IV.

The foregoing considerations must, we think, dispose of the case; but it may not be out of place to consider some of the decisions in the state courts; and to consider more particularly the effect of the notes being after 1885 kept by the payee in New York.

The property assessed was not within the jurisdiction of the state of Minnesota for the purposes of taxation.

It does not necessarily follow that the judgment in this case is valid if it should be determined that the property assessed was at the time of the assessment within the jurisdiction of the state, for, as we have already explained, the tax in this case is against the person, not against the property; the defendant in error is seeking to enforce a claim

against the personal representative of Sophia M. Bristol and not against the property, and the judgment that has been rendered is against such representative and not against the property.

But it does follow that the judgment is erroneous if the property taxed was not within the jurisdiction of the state when it was assessed, for Mrs. Bristol was not within the jurisdiction of the state, and to compel her to pay taxes on property also not within the jurisdiction would be depriving a person of property without due process of law.

It is claimed by the defendant in error that while the general rule is that the situs of intangible property, such as credits based on notes, bonds, contracts for the payment of money, etc., is at the domicile of the owner, yet there is an exception to this general rule in case such property is in the possession and under the exclusive control of a resident agent who has authority to collect such debts, reloan the funds, and that the admitted facts in this case are such as to bring the property taxed within the exception.

In reply, we assert, *first*, that while there are some authorities which make such an exception, they are not sound in principle, and *second*, that the admitted facts in this case are such as show that the property assessed was not within the exception, at least, not since March, 1885.

(*a*) Is there any exception to the general rule that intangible property has its situs at the domicile of the owner in case of ordinary notes and con-

tracts for payment of money, which are in the hands of a resident agent, who has authority to collect and reloan the money?

It must be admitted that there are decisions of some state courts holding the doctrine that there is such an exception. Other state courts have denied this rule, and adhere strictly to the rule laid down in the case of *State Tax on Foreign-held Bonds,* that the situs of intangible property for the purpose of taxation is at the domicile of the owner.

The Supreme Court of Wisconsin in the case of *State ex rel. Dwinnell v. Gaylord,* 73 Wis. 316, has directly refused to follow the doctrine that, where notes or evidences of debt are held by an agent for collection and re-investment, the situs for taxation is with the agent.

The Supreme Court of Connecticut holds to the same effect in *Kirtland v. Hotchkiss,* 42 Conn. 426.

The Court of Appeals of New York and the Supreme Court of Alabama have refused to apply the doctrine where the principal and agent both reside in the state. *Boardman v. Supervisors,* 85 N. Y. 360; *Boyd v. Selma,* 96 Ala. 144.

This is a question upon which the highest courts of different states are divided. It is a question which must ultimately be decided by this court, as it necessarily involves a federal question.

Taxation of such property belonging to a non-resident, if the true situs of the property is out of the jurisdiction of the state, is taking property without due process of law.

To say that the situs of a debt is with the agent who has control of it, or with the owner is, in either case, a legal fiction. A debt is an intangible thing. It is important, however, that some uniform rule should be established, and we claim that the rule held by those courts, which adhere strictly to the rule laid down by this court, that the situs of such property is at the domicile of the owner, is better in practice and more conducive to justice between the various states and citizens of other states doing business in them than the other rule. The doctrine that the situs of such property is at the place of residence of the agent results almost always in double taxation where the agent lives in one state and the principal in another. Almost every state claims and exercises the right to tax its own citizens on his intangible property, such as debts due him, whether it is controlled by an agent who resides in a foreign state or not.

The case of *People v. Smith,* 88 N. Y. 577, was in marked contrast to the general rule and held that the situs of debts in the control of an agent in another state was where the agent was, and that there was no state statute in New York authorizing such property to be taxed there.

The next session of the legislature promptly nullified the effect of that decision by providing that such property should be taxed in New York. *Chap.* 392 *Gen. Laws of New York, of* 1883.

The Court of Appeals of New York in the case of *People ex rel Darrow v. Coleman,* 119 N. Y. 137,

state that this law was passed to meet the effect of the prior decision.

A court should not invent a fiction of law, which is of necessity an instrument of injustice. The rule localizing credits at the debtor's residence tends to discourage interchange of business between the various states. A person who attempts to invest money in a state other than that where he lives is thereby rendered liable to double taxation and is thus put at a disadvantage in competition with persons who happen to live and do business in the same state, whereas, under the rule that such property is taxable only where the owner lives there is no injustice done; each state may tax its own citizen upon such property.

(*b*) But even conceding that there is such an exception to the general rule where the debts, notes and contracts are in possession of and under the absolute control of a resident agent, and that in such cases the situs of the property is where the agent is located, yet the admitted facts in this case show that after March, 1885, the agent of Sophia M. Bristol did not have that absolute and unqualified control of the indebtedness on which these taxes were levied essential to give the indebtedness a situs in Minnesota. After March, 1885, the notes evidencing the indebtedness were kept by Sophia M. Bristol at her residence in the State of New York (Finding IV, Fol. 77, Transcript). And after November, 1890, her agent not only did not hold the notes, but he had no authority to satisfy mortgages (Finding V. Fol. 77, Transcript).

After these notes came into the possession of Mrs. Bristol and she held them in her own hands at her own home, she had not only the beneficial interest in the debts but she had the actual possession and control of them. She could deal with them as she saw fit, without conferring with her agent, and without any co-operation on his part. If she desired to sell or to pledge them as collateral security, she had only to indorse and deliver the paper in the usual course of business. She did not have to consult her agent in any manner and it is a misuse of terms to say that the situs---the location of the property in those debts---is anywhere but at the domicile of Mrs. Bristol. The very fact that the evidences of the debt are in the possession of the owner at her residence is inconsistent with the situs of the debt being at any other place. We do not intend to subscribe to the rule laid down in some cases that the place where such evidences of debt are kept always determine the situs of the debt. The situs of such debts is doubtless often at the domicile of the owner, even if the paper evidences of the debt are at another place. But we do claim that, where the *owner* of such debts has the evidences of debt in his possession and under his control at his domicile, their situs for the purpose of taxation cannot be at any other place.

This is as we understand the holding of this court in the case *State Tax on Foreign-held Bonds.* In the argument in that case counsel for defendant in error cited and quoted at length from the opinion in the case of *Catlin v. Hull,* 21 Vt. 158,

which is the leading case holding the doctrine that the situs of debts may be at the place where an agent has control of them. Yet this court, Justice Field writing the opinion, after stating that the situs of property, which has a visible, tangible existence, and also public securities, state bonds, bonds of municipal bodies and circulating notes of banking institutions, is at the place where they are found, says: "But other personal property, consisting of bonds, mortgages and debts generally, has no situs independent of the domicile of the owner, *and certainly can have none where the instruments, as in the present case, constituting the evidences of debt, are not separated from the possession of the owners.*"

In every case where it has been held that the situs of debts for the purposes of taxation is at the place where they were controlled by an agent, the evidences of the debts were in the possession of the agent, and this fact is considered of great importance as indicating that the agent has full control of the debts. Yet the District Judge states, in his decision in this case, that the fact that the notes were in the possession of Mrs. Bristol at her home in New York was immaterial and cites as authority the case of *Dundee Mortgagee Co. v. School District,* 19 Fed. Rep. 359. While there are some statements in the opinion of the court in that case to the effect that it was immaterial that the notes were in the hands of the owner, the point was not involved in the decision. In the first place, it was determined in that case that the taxes in question

were invalid on the ground that they were not uniform, and, in the second place, the taxes involved were taxes upon the interest of the mortgagees in real estate assessed where the real estate was situated, not taxes on the debt. They were not assessed at the place where the agent resided or did business, but where the land mortgaged was situated.

The other cases cited by the district court are *People v. Smith*, 88 N. Y. 576 and *In re Jefferson*, 35 Minn. 215, and the cases cited in the opinion of the court in the latter case.

In the case of *People v. Smith*, 88 N. Y. 576, the question was whether Jefferson was taxable in New York, where he lived, on account of notes and mortgages owned by him in the possession and under the control of his agents in Minnesota, Wisconsin and Illinois. The court held that, inasmuch as these securities were never brought within the territorial limits of the state of New York, but had always remained in the possession of the agents who had absolute control of them, the situs of the property represented by them was not in New York, and the taxes assessed against them were invalid.

The court in its opinion says:

> "The statute providing for the taxation of 'personal estate within this state' was not intended to subject to taxation personal securities actually in another state, held, managed and controlled there under the protection of the laws of that state and subject to taxation there in the hands of agents. It cannot be supposed that the legislature intended that our citizens should be subject to taxation here

> and in other states also upon the same property, or that it would tax in the hands of agents here securities belonging to non-resident owners while it denied the right of other states to tax the securities of our citizens in the hands of agents there."

And the opinion closes as follows:

> "It is clear from the statutes referred to and the authorities cited and from the understanding of business men in commercial transactions, as well as of jurists and legislators, that mortgages, bonds, bills and notes have for many purposes come to be regarded as proprety and not as the mere evidences of debts and that they may thus have a situs at the place where they are found, like other visible, tangible chattels. Without extending the discussion further, we are, therefore, of opinion that the judgment should be affirmed."

It is evident, from this opinion that if, in that case it had appeared that the notes evidencing the debts were in the possession of the owner at his home in New York, the decision would have been the reverse of what it was.

This case cites as authority on this proposition the case *People v. Trustees,* 48 N. Y. 390, which case was also cited in the opinion *In re Jefferson.*

The principal question in *People v. Trustees* was whether certain contracts for the sale of land which belonged to Parish, a resident of Bohemia, and were in the hands of Westbrook, his general agent at Ogdensburg, N. Y., could be taxed to Westbrook as agent for Parish. The court held that the situs of the property was where the contracts were held by the agent and they were therefore taxable. The court says:

> "Notes, bonds and other contracts for the payment of money have always been regarded and treated in law as personal property. They represent the debts secured by them. They are the subject of larceny and a transfer of them transfers the debt. If this kind of property does not exist where the obligation is held, where does it exist? It certainly does not exist where the debtor may be and follow his person. And while, for some purposes in the law, by legal fiction, it follows the person of the creditor and exists where he may be, yet it has been settled that for the purpose of taxation this legal fiction does not to the full extent apply and that such property belonging to a non-resident creditor may be taxed in the place where the obligations are held by his agent."

It is evident from the opinion of the court that the fact of the obligations being in the possession of the agent was considered essential to fixing the situs of the debts at the place where the agent was.

Another case cited is *People v. Gardner*, 51 Barb. 352. *Judge Daniels*, in the opinion of the court in that case says:

> "*If the securities are separated from the person and domicile of the owner* and are actually in the hands of an agent in another state for collection, investment and re-investment there, it may be that capital thus situated should be regarded as foreign and not domestic in the absence of any statutory provision intended for such a case."

This case lays particular stress upon the facts that the securities were separated from the person and domicile of the owner.

The cases of *Wilcox v. Ellis*, 14 Kans. 588; *Fisher*

v. Commissioners, 19 Kas. 414, and *Finch v. County of York,* 19 Neb. 50, all follow *People v. Trustees,* 48 N. Y. 390, and lay special stress upon the point that situs of the property was with the agent because the evidences of the debts were in his possession.

So in *Golgart v. People,* 106 Ills. 25, the court says:

> "And so in the case of the non-resident creditor not having parted with his credits, there is nothing here to tax, nothing here to which jurisdiction can attach. This is well settled by adjudicated cases * * * and must be peculiarly so in the case of negotiable instruments. They are the subject of larceny and their indorsement transfers the credits of which they are the evidence. They are regarded as property and, of course, this must be property having its situs where they are lawfully held."

Another case cited in *In re Jefferson* is *Redmond v. Commissioners,* 87 No. Car. 122.

It was here held that, where a resident agent sold lands for a non-resident principal and kept the contracts in his possession and they were under his exclusive control, the property in the contracts was taxable in North Carolina.

But the same court in *Railroad Co. v. Commissioners,* 91 N. C. 454, commenting on the Redmond case, says, pp. 457-8, that credits must be taxed at the owner's domicile, "except in cases where the indebtedness consists in notes, bonds or other securities which are in the hands of an agent and are therefore like visible personal property, having a situs of its own for purposes of taxation, as held in *Redmond v. Commrs.*"

In the cases of *Catlin v. Hull* 21 Vt. 152 and *In re Jefferson*, 35 Minn. 215, securities comprising the evidences of indebtedness were in the possession of the agent.

So, in the recent case in the United States Circuit Court of Appeals of the Sixth Circuit, *Walker v. Jack*, 31 C. C. A. Reports 462, 88 Fed. Rep. 576, the court holds that debts of a non-resident owner, where the investment is under the control of a resident agent, may be taxed where the agent is located, and the court adds, after stating the rule and the authorities, "*In such cases the circumstance that the agent has in his possession the evidence of the indebtedness is regarded as of importance.*"

We have thus referred to the language of the opinions of these cases to show that the courts, which have held that debts may have a situs at a place other than the domicile of the owner, have regarded as essential to the application of the rule, that the securities, which evidence the indebtedness, should be in the possession of the agent, or at least should not be in the possession of the owner at some other place, and they therefore are in harmony with the rule stated by this court in *State Tax on Foreign Held Bonds*, already quoted, that debts can have no situs independent of the domicile of the owner when the instruments constituting the evidences of the debts are not separated from the possession of the owner.

In view of the fact that the evidences of debts in this case were *promissory notes*, it is important to take into consideration the law in Minnesota which

is in this respect somewhat different from that of some other states.

In Minnesota, a promissory note is property. It is regarded in many respects as the debt itself. The debt evidenced by a promissory note may be subjected to a levy of a writ of attachment or execution by simply taking possession of the instrument. *Mower v. Stickney,* 5 Minn. 397; *Swart v. Thomas,* 26 Minn. 141.

The mortgage is a mere security for the debt represented by the note and a transfer of the note carries with it the mortgage.

Taxes in Minnesota are assessed annually on personal property as of the 1st day of May of each year. *Gen. Statutes of Minnesota of* 1894, *Sec.* 1514.

The promissory notes which were the evidences of the debts taxed were in the possession of Mrs. Bristol at her home, May 1, 1885, when the tax of that year was levied, and every year thereafter, and the debts could not have had a situs for the purpose of taxation during that time in the State of Minnesota. After November, 1890, the agent in Minnesota did not have the authority to satisfy mortgages. This is another circumstance that shows more clearly that the debts after that time were under the control of Mrs. Bristol, their owner.

We wish also to emphasize the point that there is probably no state in the Union where it would be held that a resident of such state having negotiable notes representing debts due from citizens of another state in his own possession at his own home is not taxable therefor at his domicile; and it would

be a great injustice to make a rule that the situs of such property may also at the same time be at another place and also taxable there.

The debts taxed were, therefore, at all events, not within the jurisdiction of the State of Minnesota at the time the taxes for the years from 1885 to 1894, inclusive, were assessed.

V.

The remedy for the collection of the taxes for the years 1883 to 1888, inclusive, was barred by the statute of limitations of the State of Minnesota at the time the claim of Washington County was filed in the office of the Probate Court of Ramsey County.

This statute of limitations was pleaded by the defendant in his answer (Transcript, fol. 60.) See also Assignment of Error, No. 7, in this Brief.

Sophia M. Bristol died in August, 1894 (Finding XI, Fol. 80, Transcript).

Her will was admitted to probate by the Probate Court of Ramsey County, Minnesota, October 19th, 1894 (Finding XII, Fol. 80, Transcript).

Washington County filed its claim for taxes in said Probate Court April 18th, 1895 (Finding XII, Fol. 80, Transcript).

The statutes of Minnesota that are material to be considered on this point, are the following:

The Statute of Limitatons, *Title* 2, *Chap.* 66, *Gen. Stat. of Minnesota of* 1894. Section 5133 reads as follows:

"Actions can only be commenced within the periods prescribed in this chapter after the cause of action accrues, except where in special cases a different limitation is prescribed by statute."

Section 5136: Within six years.

"First---An action upon a contract or other obligation, express or implied, excepting those mentioned in the preceding section." (The preceding section refers to judgments.)

"Second---An action upon a liability created by statute other than those upon a penalty or forfeiture."

Section 1541, Gen. Statutes of Minnesota of 1894, provides that the assessor shall assess the value of all property during the months of June and July in each year.

Section 1557 provides that state taxes shall be levied on or before the first day of October annually, county taxes in July of each year and city, town and school district taxes on or before October 10th of each year.

Section 1562 reads as follows:

"The county auditor shall deliver the lists of the several districts of the county to the county treasurer on or before the first Monday in January in each year, taking his receipt therefor, showing the total amount of taxes due upon the said lists, and such lists shall be full and sufficient authority for the county treasurer to receive and collect taxes therein levied."

Section 1567. "All unpaid personal property taxes shall be deemed delinquent on the first day of March next after they become due and thereupon a penalty of ten per cent shall attach and be charged upon all such taxes. On

the first day of April in each and every year the county treasurer shall make a list of all such delinquent personal property taxes which he shall certify to the clerk of the district court of his county and the said clerk shall immediately issue his warrants to the sheriff of the county, directing him to proceed to collect the same and if such taxes are not paid upon demand said sheriff shall distrain sufficient goods and chattels belonging to the person charged with such taxes if found within the county, to pay the same, with the penalty of ten per cent. and all accruing costs."

Section 1568 provides that if the sheriff is unable to collect said taxes by distress he shall file with the clerk of the court on the first day of June following a list of taxes not collected and return the warrants, and that the clerk shall deliver such list to the board of county commissioners at their first session thereafter and they shall cancel such taxes as they are satisfied cannot be collected.

Section 667, Gen. Statutes of Minnesota of 1894, provides that the boards of county commissioners shall meet at the county seat of their respective counties on the first Tuesday after the first Monday in January and on the second Monday in July of each year.

Section 1569 provides:

"Within ten days after the adjournment of the board of commissioners, the auditor shall file a copy of said revised list with the clerk of the district court of the county, and within ten days after the filing of such copy the clerk shall issue and deliver to the sheriff of the county where the person, against whom such tax is claimed, may at the time reside, or be for service, a citation to each delinquent named on the

> list, stating the amount of the tax and penalty, and requiring such delinquent to appear on the first day of the next general term of the district court in the county appointed to be held at a time not less than thirty days after the issuance of such citation, and show cause, if any there be, why he should not pay said tax and penalty, and if he fails to pay said tax, penalty and cost to the sheriff before the first day of the term or on said day to show cause as aforesaid, the court shall direct the clerk to enter judgment against such delinquent for the amount of such tax, penalty and cost."

From the foregoing statutes it appears that if the taxes were valid, Washington County had the right to proceed to distrain the property and enforce the lien thereon on the first day of April following the year when the tax was assessed and levied in each case, and that it had the right to cite the person taxed into court and apply for personal judgment in the month of July of each year after the tax was levied and assessed.

The action in this case is in form a proceeding to collect a personal claim against the personal representatives of Sophia M. Bristol. We have already shown that Sophia M. Bristol was not a resident of the State of Minnesota and, therefore, the state had no jurisdiction to levy a personal tax against her. These taxes were at all events then not a personal claim against her. It may be claimed, however, that this action may be considered an action against the property, a proceeding *in rem*. If it is possible to so construe the action, and we do not admit that it is, then the action is barred by the statute of limitations so far as it relates to the taxes assessed in

the years 1883, 1884, 1885, 1886, 1887 and 1888. The right of the state to proceed to enforce its lien against the property for the tax of 1888 commenced April 1st, 1889. This action was not commenced until the claim was filed in the Probate Court April 18th, 1895, after the six years' limitation had expired.

The statute of limitations of six years on an action to enforce a liability created by statute applies to proceedings to enforce taxes in Minnesota against the property taxed. *County of Redwood v. Ry. Co.*, 40 Minn. 512.

In this case it appears that certain lands not having been taxed were in 1886 assessed and a tax levied for each year for about fifteen years prior to that time. On an application for a judgment against the land, the owners of the land objected on the ground that the statute of limitations had run as to all taxes where the application for judgment could have been made six years or more prior to the time it was made if the land had been taxed at the time it should have been taxed under the statute, and the court sustained the objection, reversing a former decision, *County of Brown v. Winona Co.* 38 Minn. 397. The court held that by statute in Minnesota, the statute of limitations runs against the state the same as against an individual. That a tax was a liability created by statute. That while the statute of limitations in terms applies only to "actions," they are to be construed liberally and applied to all proceedings that are analogous in their nature to actions "so as to make the right sought to

be enforced, and not the form of procedure, the test as to whether or not the statute applies. Upon this principle they are held to apply to all claims which may be the subject of actions, however presented, also that they furnish a rule for cases analogous in their subject matter, but for which a remedy unknown to the common law has been provided. They have also been applied by analogy to proceedings in admiralty, to claims in bankruptcy, or in the probate court, although not within the strict letter of the statute."

See also *Mower County v. Crane*, 51 Minn. 201; *Pine County v. Lambert*, 57 Minn. 203; *State v. Norton*, 59 Minn. 424.

It is claimed that the statute of limitations did not run against a proceeding to collect these taxes for the reason that Sophia M. Bristol was, when the cause of action accrued, not a resident of the state and continued such down to her death. Sec. 5145 Gen. Statutes of Minnesota of 1894.

If these taxes were a valid personal claim, this might be a defense to the statute. If, however, this action can be construed as a proceeding *in rem* to enforce a lien against the property, then the statute has run as above stated as to the taxes of 1888 and prior years, for the property has at all times since the levy been as much within the state as it was at the time the taxes were levied, and the absence of Mrs. Bristol is no defense to the statute running as to a proceeding *in rem* against the property.

EMERSON HADLEY,
C. W. BUNN,
Counsel for Plaintiff in Error.

Filed Jan. 27, 1900.

JAMES BRISTOL, as Executor,
Plaintiff in Error,

v.

WASHINGTON COUNTY, STATE OF MINNESOTA.

No. 107.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

C. W. BUNN,
Of Counsel for Plaintiff in Error.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1900.

Supreme Court of the United States.

OCTOBER TERM, 1899.

JAMES BRISTOL, AS EXECUTOR,
PLAINTIFF IN ERROR,

v.

WASHINGTON COUNTY, STATE OF MINNESOTA.

No. 109.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

1. Our proposition that this is a *personal* judgment invalid under *Dewey* v. *Des Moines*, 173 U. S. 193, is not altered by the fact that it is payable *only* out of assets in administration. It is payable out of *all* the assets of deceased (not out of taxed assets only). If valid it is payable in New York, and binding on heirs, devisees, or executors there. It is collectible there if it cannot be satisfied out of assets in Minnesota covered by the ancillary probate.

2. Our position is that a State can, by its legislation and action of tax officers thereunder, create no *personal* claim against a non-resident.

It was asked in argument, What becomes of the tax if

the property is withdrawn from the State? We answer, If it is withdrawn unlawfully or fraudulently, the owner doing so might be liable as for defeating a lien, *i. e.*, not beyond the value of the taxed property. We submit that as to a non-resident, a personal property tax can be no more than a lien; that *it cannot be* a general personal obligation of the person assessed. Suppose a non-resident sells his personal property, *subject* to taxes assessed, deducting these from the selling price. Does he remain subject to personal suit for the taxes, or are they at most only a lien on the property? In our view, they are clearly a lien only. Suppose Mrs. Bristol has sold the taxed property involved here—to a resident of the State, may be—does she still continue liable personally?

3. The true principle is that personal obligations cannot be created against non-residents by mere force of State law. The same rule in this respect applies to the legislative department which was laid down in *Pennoyer* v. *Neff* as to judicial proceedings. If a Court cannot on service by publication create by its judgment a valid personal claim against a non-resident, how can the Legislature or the assessor do the same thing by a law or an assessment?

These questions, we think, should be regarded as settled by *Dewey* v. *DesMoines*.

4. We say that the laws of Minnesota attempt to tax the "*debt*" only: not the mortgage, not the note: that debts simply are not tangible and can have no situs separate from the domicile of the owner. Case of *State tax on foreign held bonds*. The well-considered cases where debts due non-residents are held to have a situs in the State are either (*a*) cases where the resident agent was the

person taxed, or (*b*) where the tax was really on the *note* regarded as a tangible article of property and being held within the State, as in *New Orleans* v. *Stempel*, 175 U. S. 309, or on the mortgage as an interest in real estate. How a non-resident employing a local agent with power to make loans gives the *debt* a local situs is to us not comprehendible. A tax on the debt seems to us most clearly incapable of enforcement as a lien and therefore sustainable, if at all, as a pure tax on the non-resident's person.

This is made more clear by the fact (which we think must be conceded) that no valid procedure was possible in Minnesota *to enforce this tax as a lien on the debts taxed.* The County waited and was compelled to wait either till Mrs. Bristol died, or until she could be found in the State, and thus personal service secured and the tax enforced as a personal claim.

The learned counsel for the County contended that the statute of limitations had not run, because Mrs. Bristol had been out of the State. This argument shows the correctness our contention. Because the argument applies only in case the liability and cause of action is personal. *If the tax was a lien on property having a situs in the State, it could have been enforced at any time against that property.*

C. W. BUNN,
Of Counsel for Plaintiff in Error

f. 109.

IN THE SUPREME COURT OF THE UNITED STATES.

NO. 109, OCTOBER TERM, 1899.

JAMES BRISTOL, as Executor of the Last Will and Testament of Sophia M. Bristol, Deceased,

Plaintiff in Error.

vs.

WASHINGTON COUNTY, STATE OF MINNESOTA,

Defendant in Error.

Reply of Plaintiff in Error to Petition of Defendant for a Rehearing.

C. W. BUNN,
EMERSON HADLEY,
Counsel for the Plaintiff in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

NO. 109, OCTOBER TERM, 1899.

JAMES BRISTOL, as Executor of the Last Will and Testament of Sophia M. Bristol, Deceased,
Plaintiff in Error,
vs.
WASHINGTON COUNTY, MINNESOTA,
Defendant in Error.

Reply of Plaintiff in Error to the Petition of the Defendant for a Re-Hearing.

The defendant in error asks the Court to change its judgment so as to give Washington County judgment for one more year's taxes, to-wit,—the taxes of 1888. The ground of the application is that the statute of limitations, so far as the collection of the taxes of 1888 is concerned, did not commence to run until after July 1st, 1889, and second, that, by virtue of Section 5148, of the General Statutes of Minnesota of 1894, the running of the statute of limitations was interrupted at the death of Mrs. Bristol and did not continue to run until one year after the issuing of letters testamentary.

With regard to the first proposition, it seems to us that counsel for the defendant in error have failed to understand the de-

cision already rendered by this Court. In that opinion, the Court made it clear that Washington County could have commenced proceedings to collect the taxes of 1888 out of the property of Mrs. Bristol on April 1st, 1889; that the tax became a lien upon the property on the date when the tax books were received by the County Treasurer, which, for the tax of 1888, was the first Monday of January, 1889; that if the tax was not paid on April 1st, 1889, it was the duty of the County Treasurer to immediately deliver the delinquent lists to the Clerk of Court and then it was the duty of the Clerk of the Court to immediately issue warrants of distress to be levied upon the property of Mrs. Bristol. This, as the Court held, was in the nature of an action *in rem* against the property. It is true that a citation, which was necessary for a personal judgment, could only be issued and served after a meeting of the county commissioners, but proceedings against the property could have been commenced on April 1st, 1889. Therefore, the statute of limitations had run on April 1st, 1894, unless the running of such statute was interrupted by the death of Mrs. Bristol.

The other claim of the defendant in error is that the running of such statute of limitations was interrupted by virtue of Section 5148, of the General Statutes of Minnesota for 1894, which reads as follows:

"If a person, against whom an action may be brought, dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration."

But this statute does not apply so far as the right to proceed against the property of Mrs. Bristol is concerned. The right to

proceed against the property was not interrupted by her death. The lien upon the property still continued and the County might have proceeded to enforce it. The Supreme Court of Minnesota has held that this Section does not apply to the foreclosure of a mortgage, for the reason that the right to proceed against the mortgaged property is not interrupted by the death of a mortgagor.

See

Hill v. Townley, 45 Minn. 167.

We submit that the decision of the Court should not be further modified.

C. W. BUNN,
EMERSON HADLEY,
Counsel for the Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 109.

JAMES BRISTOL, as executor of the last will and testament of SOPHIA M. BRISTOL, Deceased.

Plaintiff in Error.

vs.

WASHINGTON COUNTY, STATE OF MINNESOTA.

Defencant in Error.

BRIEF OF DEFENDANT IN ERROR.

From the year 1869 until November, 1883, William M. McCluer who resided in the City of Stillwater, Washington County, Minnesota, carried on a very considerable business in loaning money to persons residing in Minnesota, secured by mortgages on real estate situate in Washington County, and other adjoining counties in Minnesota, but principally in Washington County.

Folio 87, Page 49 Record.

McCluer had an office in Stillwater where said loans were negotiated and such business transacted and the notes and mortgages taken on such loans were executed and made payable at such office, and in the usual course of such business, the sums due on said loans, both principal and interest, were collected by McCluer who from time to time re-invested the same in like loans to residents of Minnesota, secured by like mortgages on real estate in Washington and other adjoining counties in Min-

nesota, principally in Washington County; so that the entire fund and its accumulations as nearly as practicable, were kept permanently invested in such loans in Minnesota.

Folio 87, Page 49 Record.

Folio 91, Page 51 Record.

The money so loaned by William M. McCluer in said business was the property of Cyrus Jefferson, a resident of the Village of Warsau, New York, who during the years mentioned authorized McCluer to carry on said loan business in the manner stated and in whose name all such notes and mortgages were taken, but such notes and mortgages were kept in the hands of William M. McCluer, who remitted to Jefferson from time to time, such sums as the latter required for his living expenses. All money in said business when not actually loaned, was kept by McCluer in his own bank account in Stillwater.

Folio 87, Page 49, Record.

Folio 91, Page 51, Record.

In the year 1880 the assessors of the Village of Warsau, New York, where Jefferson resided, assessed him for the mortgage loans taken by agents in Illinois and Wisconsin, and also upon the mortgage loans procured by William M. McCluer in Washington County, Minnesota, and Jefferson resisted the tax on the ground that such property had been accumulated in such states from small investments originally made by placing money to loan in the hands of McCluer and other agents who fully controlled such investments and who re-invested the same both principal and interest from time to time and who had full control and management of such business so that the property was permanently invested in such states and the situs and place of taxation of such property was in the several states where such agents resided. The Court of Appeals of New York, in April, 1882, so decided in

People ex. rel. Jefferson vs. Smith, 88 N. Y. 576.

Folio 71, Page 39, Record.

In the years 1882-1883 the mortgage loans so taken by said William M. McCluer and accumulated in said loan business by him for Cyrus Jefferson as stated, were assessed and taxed to Cyrus Jefferson by the proper taxing officers of the state of the State of Minnesota, acting in and for Washington County.

Folio 91 Page 52 Record.

While proceedings on such tax levies were pending and in November, 1883, Cyrus Jefferson died, and his estate, in Minnesota, including the mortgage loans acquired in said loan business so carried on by his agent, William M. McCluer, was probated in the Probate Court of Washington County, Minnesota.

Folio 91, Page 52, Record.

In the course of such probate proceedings and in March 1884, Washington County duly filed its claim for the taxes so levied on said mortgage loans for the years 1882, and 1883 as above stated, against the estate of Cyrus Jefferson. The claim was allowed against his estate and was appealed to the District Court, and there such allowance was affirmed and an appeal was taken to the Supreme Court of the State. In 1886 the Supreme Court of Minnesota upon such appeal, held such loans taxable in the State of Minnesota, upon the ground that such property was so permanently invested in Minnesota, and under the control and management of William M. McClure as agent of Jefferson as to give it a situs in Minnesota taxable there under the Statutes of Minnesota.

In re Jefferson, 35 Minn. 215, Foli 71, Page 39, Record.

In 1883, prior to May 1st, (the taxing day in Minnesota) Cyrus Jefferson directed said McCluer to, and the latter did, invest Eighteen Thousand Dollars, ($18,000.00) of the money then in said loan business, in similar loans secured by mortgages on similar lands, in the name of Sophia M. Bristol, daughter of Cyrus Jefferson.

Folio 88, Page 49, Record.

After Jefferson's death in November, 1883, and on December 18, 1883, all of the notes and mortgages which

had been accumulated and acquired in said loan business carried on by McCluer in Stillwater as aforesaid, and then remaining unpaid were assigned and transferred to his daughter, Sophia M. Bristol, as her share of the estate of her father, Cyrus Jefferson. Thereafter said loaning business was carried on and transacted by said William M. McCluer and Charles McCluer his son, and in addition to having the control and authority previously exercised by William M. McCluer in carrying on said loan business for her father Cyrus Jefferson, Sophia M. Bristol gave to said McCluers a power of attorney authorizing them or either of them, to satisfy and assign all mortgages of record in her name in Minnesota and Wisconsin. This power of attorney was formally revoked in November, 1890, but such revocation was not recorded in Washington County until February 14th, 1893.

Folio 88, Page 49 Record.

After Sophia M. Bristol became the owner of the said loaning business and the notes and Mortgages accumulated and resulting therefrom, said McCluers continued, as William M. McCluer previously did for Cyrus Jefferson, to make all collections on account of said loans and to transact the details of said loan business at said office in Stillwater, and to make new loans and investments from the proceeds of such collections, making all notes and mortgages payable at their office, negotiating such loans there, keeping said funds and accumulations thereof as nearly as practicable permanently invested in like loans in the State of Minnesota, principally in Washington County.

Folio 88, Pages 49 and 50, Record.

Said McCluers kept all money arising in the conduct of said business when not actually reloaned and re-invested by them as aforesaid, in their own name in their bank account in the city of Stillwater.

Folio 91, Page 51 Record.

In March 1885, and while the claims of Washington County against the estate of Cyrus Jefferson for the taxes of

1882, and 1883, was pending in the Courts of Minnesota, all the notes taken in said loaning business by McCluer and in their hands, and then owned by Sophia M. Bristol, were sent East to Sophia M. Bristol, who was then, and during all the period covered in this case, was a resident of the State of New York.

Folios 88-89. Page 50 Record.

It does not appear at whose suggestion or request the notes were sent to her.

Thereafter all new notes and mortgages taken on re-loans and re-investments, were made, and made payable as before at the office of said McCluers, but the notes were sent to Sophia M. Bristol and she retained them, until the McCluers called for such notes for use in such loan business. And, as such notes were from time to time required by said McCluers in the course of such loan-business for payment, renewal or foreclosure, or otherwise, they were returned to the McCluers. The mortgages during all of the time covered by this case, were retained in the actual possession of the McClures at Stillwater, Minnesota.

Folio 89, Page 50, Record.

The loaning business was carried on after March, 1885, in the same manner as before, collections both principal and interest were made at said McClures office and were kept and reinvested by the McCluers in the same manner and upon like securities as before and were generally made upon their own judgment, but sometimes upon the advice of the husband of Sophia M. Bristol.

Folio 89, Page 50.

The McCluers remitted money to Mrs. Bristol from time to time as requested by her and what was not remitted was invested in new loans as aforesaid. The amount of loans taxed in Washington County appears to have fluctuated from One Hundred and Eighty-four Thousand Dollars, ($184,000) in 1884, to One Hundred and Ninety-six Thousand Dollars

($196,000) in 1888 to One Hundred and Seventy-nine Thousand and Nine Hundred Dollars, ($179,900) in 1894.

Folio 86, Page 48, Record.

The business was thus continued by the McCluers until 1890 when William M. McCluer died, and his son, Charles M. McCluer continued to conduct the business alone in the same manner until Sophia M. Bristol died in 1894.

Folio 90, Page 51, Record.

The only difference in the manner of conducting the business during the lifetime of Jefferson and during the life of Sophia M. Bristol, was that after his death, the notes and mortgages were payable to Sophia M. Bristol, and after March 1885, the notes were sent east and retained by her until they were returned from time to time to the McCluers as required by the latter for use, collection, renewal or foreclosure, in such loan business. In all other respects the general course of conducting said loan business remained the same, except that after Cyrus Jefferson's death, the McCluers had also authority to satisfy and assign all mortgages in the name of Sophia M. Bristol in Minnesota, until the revocation of said power of attorney. Keeping the money prior to re-investment in Bank at Stillwater in their own name.

Folio 90, Page 51, Record.
Folio 91, Page 51, Record.

This property, being the loans so made by the McCluers, as stated, was assessed each year from 1883 to 1894, both inclusive, being listed as "Credits other than that of banks, bankers, brokers or stock jobbers."

Folios 85-86, Pages 47-48, Record.

In September, 1894, after the death of Sophia M. Bristol, probate proceedings were commenced in the Probate Court of Ramsey County, Minnesota, as to her estate situated in Minnesota, including the mortgage loans so acquired and accumulated in the said loan business so conducted by William M. McCluer for Cyrus Jefferson, and by both McCluers for Sophia M. Bristol.

Folio 2, Page 2, Record.

In the course of such probate proceedings and on April 18th, 1895, this proceeding was commenced by the filing in said Probate Court of Ramsey County, Minnesota of the duly verified claim of Washington County, Minnesota, for such personal property taxes so levied for the years 1883 to 1894, both inclusive, amounting to the sum of Sixty-four Thousand, Six Hundred and Eighty-four Dollars and Seventy-eight Cents ($64,684.78) and interest against the estate of Sophia M. Bristol.

Pages 20, 21, 22, 23 Record.

Thereafter on April 29th, 1895, James M. Bristol, as executor of the last will and testament of Sophia M. Bristol, deceased, made answer and written objection to said claim in said Probate Court of Ramsey County, Minnesota.

Pages 23, 24, 25 Record.

Thereafter such proceedings were had that upon the petition of said James M. Bristol, as such executor, showing among other things that he was a citizen of the State of New York, at the time said claim was so filed against said Estate in said Probate Court; this proceeding was removed from said Probate Court of Ramsey County to the Circuit Court of the United States, and such proceedings were duly had therein that the same came on for trial before the Court without a jury, the parties having waived a jury trial, and stipulated as to the facts.

Pages 26, 27, 28, 29, 30 Record

Pages 47-53 Record.

No question was, or is made as to the fairness or amount of the assessments or the regularity of the tax proceedings, or of the proceedings to enforce this claim against the estate of the said Sophia M. Bristol, except of course, the claim that the property was not subject to taxation.

Folio 70, Page 38, Record.

Upon the trial the court found the facts substantially as

above stated, and that the course of business had given the property such a *situs* in Minnesota, as under the tax laws of Minnesota rendered it subject to taxation in that state, and that the proceedings were regular, and ordered judgment accordingly.

Pages 37 to 46, Record.

ARGUMENT.

Nine assignments of error are made by plaintiff in error in his petition for a writ of error.

Record page 54 and 55.

These assignments of error present, it seems to us, only two question,

First: Does any statute of the State of Minnesota which authorizes, or which the Court below determined authorized the rendition of this judgment, amount to taking of property of plaintiff in error without due process of law?

Second: Had the property taxed a *situs* in the State of Minnesota so as to subject it to taxation in that state?

The first question is the only one which justifies this Court in taking jurisdiction. Counsel for plaintiff in error do not clearly point out what statute of Minnesota contravenes the provisions of the constitution of the United States which counsel claim are violated.

The question is, 'Can a state by a law providing for the levying of taxes against property within its territorial limits, owned by a non-resident, create any obligation on the part of the owner of such property to pay such tax, beyond his liability to have the specific property taxed, taken to pay it, although no attempt is made to hold the owner personally liable, except upon personal service, nor to take any property in the absence of personal service, other than that taxed, except by attachment proceedings?'

That the law of the State of Minnesota *does* create such an

obligation, is, so far as the State of Minnesota is concerned, unquestionable.

In re Jefferson, 35 Minn. 215.

State vs. Red River Elevator Co., 69 Minn. 131.

County of Redwood vs. Winona & St. Peter Land Co., 40 Minn., 512.

In this latter case the Court say:

"In their reply brief counsel advance a new point against the validity of the act. Briefly stated, it is this: Conceding that the opportunity to answer and be heard in the proceedings to obtain judgment against real property satisfied the constitutional requirement as to "due process of law," yet the act in question provides for the assessment and taxation of both real and personal property, and, as it makes no provision for the collection of such taxes, they can be collected, if at all, only only under the provisions of the general tax law; that under that law (section 58, as amended in 1885, 1567) personal taxes become delinquent on March 1st, and are enforceable, after April 1st, by distress of property; that, as this is prior to any notice or opportunity to the tax-payer to be heard, therefore the act is void as to personal taxes, and, if so, the whole act is void, *first*, because its purposes are so connected that it cannot be presumed that the legislature would have passed it for the the purpose of collecting taxes for "omitted" years on real property alone; and, *second*, to hold it valid as to taxes on realty, and not on personalty, would render it repugnant to the constitutional provisions requiring equality of taxation. Without admitting the correctness of the other postulates in this line of reasoning, we think the assumption is erroneous that these personal taxes could only be collected by proceedings under the general tax law. It will be observed that the objection suggested is not to the act of 1881, providing for the assessment of the taxes, but to the supposed inapplicability of the provisions of section 58, for the purpose of enforcing them, because, if applied, they would be, under the circumstances, unconstitutional. But, assuming that section 58 is for that reason inapplicable, and also assuming that the taxes could not be enforced under

the provisions of section 60" (1569) "by serving a citatation on the party to show cause why judgment should not be rendered against him, in short, assuming that no provision of the law would be applicable—still there is a valid tax constituting a statutory liability against the property-owner to the state, which, in the absence of any law providing any other method, might be enforced by an ordinary personal action."

That it is no new or unusual thing for a sovereignty to create an obligation to pay a tax by the statute providing for its levy, and that such an obligation is one on which a common law action of debt may be maintained, is abundantly proved by the decisions of this court.

Meredith vs. United States, 13 Pet. 486.

Dollar Savings Bank vs. United States, 19 Wall. 227.

And that such obligations are of the very highest nature is also abundantly supported by authority,

State of Minnesota vs. Central Trust Co. 94 Fed. 244.

In this latter case the Court say:

"It has been held frequently that a tax lawfully imposed by the state on its citizens is not an ordinary debt, but is an obligation which by its nature should be regarded as paramount to all other demands against the taxpayer, although the law imposing the tax does not in express terms declare snch priority. And in some well-considered cases the priority has been accorded to a tax, although the statute imposing it failed to provide in so many words that it should be a lien on the property of the taxpayer. Such decisions proceed on the theory that the maintenance of good government and the public welfare are to such an extent dependent upon the prompt collection of taxes that demands of that nature should take precedence of all claims founded upon private contracts." * * * * "These decisions also express a thought which is generally prevalent in the public mind that taxes levied by the state for its own support are founded upon a higher obligation than other demands. The fact has also been recognized from time immemorial that every sovereignty ought to be armed with the

requisite power to enforce the collection of taxes without fail, and to compel the prompt payment of whatever imposts it sees fit to levy for its own support."

It will be noted that the lien which is under consideration in the case last cited is not necessarily a lien upon the property taxed. The property is taxed as of the 1st day of May. The tax lists go into the hands of the treasurer on the first Monday in January following. (Section 1562). While it is sometimes true that the property upon which the tax is levied will still, some portion of it, be in the possession of the person against whom the tax is asssessed on the following first Monday in January, it is not by any means the universal rule, or so usual that it can be said that the statute contemplates only a lien upon the property taxed. Hence,

We say that the provision for a lien upon other property of the person against whom the tax is assessed, is clearly a recognition and declaration of the principle that the levying of the tax creates an obligation on the part of the person against whom it is assessed, to pay it. And it is also settled in this Court that law authorizing the imposition of a tax by assessment upon property according to its value, does not infringe the provision of the Fourteenth Amendment, if the owner has an opportunity to question the validity or the amount of it, either before the amount is ascertained, or in subsequent proceedings for its collection.

Winona & St. Peter Land Co. vs. Minnesota, 159 U. S. 526.

See page 537 of the opinion, where numerous authorities are cited in support of this proposition.

But the State of Minnesota has not undertaken to say that as against either a resident or non-resident, any judgment shall be rendered against the taxpayer, subjecting his other property to the payment of such a tax, except by proceedings which are everywhere recognized as due process of law, and as authorized by the constitution of the United States.

The statute of Minnesota simply provides that in the col-

lection of a personal property tax against a non-resident, no judgment can be rendered against the non-resident, which will subject any of his property to the payment of a tax, unless he comes within the state and is personally served, or if not personally served, then an action can be commenced by attachment, but no judgment can be obtained under which any of his property can be taken, except the property seized under the attachment process, or, as will be seen later, in the probating of an estate (and this applies equally to a resident or non-resident) the tax may be filed as a claim against the estate with full opportunity for a defense. This is all that the Minnesota statute undertakes.

Let us see if this is not ture.

Now, without calling attention to the provisions of the Minnesota statute which give a right of hearing before the board of review, it is enough to say that when it comes to the collection of a personal property tax, Section 1567 provides as follows:

"All unpaid personal property taxes shall be deemed delinquent on the 1st day March next after they become due, and thereupon a penalty of ten per cent shall attach and be charged upon all such taxes. On the 1st day of April in each and every year the county treasurer shall make a list of all such delinquent personal property taxes which he shall certify to the clerk of the district court of his county and the said clerk shall immdiately issue his warrants to the sheriff of the county, directing him to proceed to collect the same, and if such taxes are not paid on demand, said sheriff shall distrain sufficient goods and chattels belonging to the person charged with such taxes, if found within the county, to pay the same."

Then follows provision for advertising and sale, unnecessary, we take it, to quote.

There is nothing in this section to suggest an action against the owner. It simply provides for a warrant of distraint to be levied upon property found in the county, and is strictly a proceeding against property itself.

Upon return of the warrant unsatisfied, and a review by

the board of the returned warrants, a list of unpaid warrants is certified to the clerk of the court, and he issues a citation.

"Section 1563. Within ten days after the adjournment of the board of commissioners, the auditor shall file a copy of such revised list with the Clerk of the District Court of the county, and within ten days after the filing of such copy, the clerk shall issue and deliver to the sheriff of the county where the person against whom such tax's claimed, may at the time reside, or be, for service, a citation for each delinquent named on the list, stating the amount of tax and penalty and requiring such delinquent to appear on the 1st day of the next general term of the district court in the county, appointed to be held at a time not less than thirty days after the issuance of such citation, and show cause if any there be, why he should not pay such tax and penalty and if he fails to pay said tax, penalty and cost to the sheriff before the first day of the term, or on said day to show cause as aforesaid, the court shall direct the clerk to enter a judgment against such delinquent for the amount of such tax, penalty and cost." * * * * * "Provided further, that the citation herein provided for, shall be *prima facie* evidence that all the provisions of law in relation to the assessment and levy of taxes have been complied with, and no omission of any of the things by law provided in relation to such assessment and levy, or of anything required by any officer, or officers, to be done prior to the issuance of such citation, shall be a defense or objection to such taxes, unless it be also made to appear to the court that such omission has resulted to the prejudice of the party objecting, and that such taxes have been unfairly or unequally assessed, and in such case, but no other, the court may reduce the amount of such tax, and give judgment accordingly. It shall, however, always be a defense to such taxes that the same have beed paid, or that the property upon which the same were assessed was not subject to taxation. Provided further, that where a citation is not served by reason of the fact that the person against whom such tax is assessed is a non-resident of the state of Minnesota, or by reason of the fact that such person shall have died and his estate shall have been administered and assigned, a new citation shall

issue in a proceeding brought by the county attorney against the person to whom the residue of any estate of any deceased person shall have been assigned, which proceeding shall be brought in the name of the State of Minnesota of the proper county, and in any such proceeding, provision may be had by attachment or garnishment, as in civil actions. * * * * And the court may acquire jurisdiction by publication of such citation in the same manner as in the publication of the summons in proceedings and attachment against non-residents, and such proceedings may be brought to final judgment in the same manner as provided in proceedings in citation for non-payment of personal property taxes. * * * * Provided further, that in case any person against whom such tax is claimed, resides out of the state of Minnesota at the time of the issuing of such citation, and thereafter, so that service of said citation cannot be obtained upon said person, then, and in that case the said action and proceeding may be commenced by the issuing and publication of a summons and by attachment, as provided in reference to other actions and proceedings, and in accordance with the provisions of the statute of Minnesota under Title 9 of Chapter 66 of the General Statutes of One Thousand, Eighty Hundred and Seventy-Eight."

We do not think it necessary to quote Title 9 of Chapter 66, but content ourselves with saying, and we do not think counsel for plaintiff in error will question the correctness of our statement, that there is nothing in Chapter 66 which pretends or for which it has ever been for one moment claimed, that a judgment obtained against a non-resident could be a lien upon or enforced against any property other than that taken in attachment.

The citation provided for in Section 1569 to be served upon the property owner, is the institution of a proceeding to recover the tax claim. This is a proceeding by service of a summons and in such proceeding no one contends that the statute has any extra territorial affect. At the proper stage, when a distress warrant has proved fruitless a citation, a summons, issues for service. If served upon a person within the

state, the judgment would be like any other judgment, one which could be made out of any of his property subject to execution, but if served by attachment and publication on account of his being a non-resident, or out of the state, the judgment can only bind so much of the property as is taken in attachment.

The case cited by plaintiff in error, *Dewey vs. Des Moines, 173 U. S. 193*, we submit is not in point. In that case a citizen of Illinois was the owner of certain lots in Des Moines, Iowa, which were assessed by the municipal authorities for local improvement in an amount beyond their value. The statutes of Iowa authorized a personal judgment against the owner without any personal service on him. In discussing the statute, the Court say:

"Thus a non-resident, simply because he was the owner of property on a street in a city of Iowa, finds himself by the provisions of the state statute, and without the service of any process upon him, laid under a personal obligation to pay a tax assessed by the common council. The plaintiff prior to the imposition of the assessment had never submitted himself to the jurisdiction of the state, and the only jurisdiction the state had in the assessment proceedings was over the real property belonging to him and abutting on the street to be improved. An assessment upon lots for a local improvement is in the nature of a judgment?"

And further commenting, the Court say:

"The principle which renders void a statute providing for the personal liability of a non-resident to pay a tax of this nature, is the same which prevents a state from taking jurisdiction through its courts by virtue of any statute over a non-resident not served with process within the state, to enforce a mere personal liability and where no property of the non-resident has been seized, or brought under the control of the Court." Citing the leading case of *Pennoyer vs. Neff*.

Further:

"A judgment without personal service against a non-

resident is only good so far as it effects the property which is taken or brought under the control of the court, or other tribunal, in an ordinary action to enforce a personal liability, and no jurisdiction is thereby acquired over the person of a non-resident further than respects the property so taken."

The principle involved in the Dewey case as said by this Court, is the principle which prevents the state from taking jurisdiction without service, and in excess of property seized.

It will be seen therefore, that there is a vast difference between the Iowa statute and the Minnesota statute. The Iowa statute violates the rule that a judgment without personal service against a non-resident is only good so far as it affects the property which is taken or brought under control of the court, and no jurisdiction can be acquired over the person of the non-resident further than respects the property so taken. The Minnesota statute does not contemplate any judgment until after personal service or attachment of property, and allows an ample defense and comes within the rule sanctioned by this court in the many cases cited in *Winona & St. Peter Land Co. Minnesota, supra*, and no claim of extra territorial effect can be spelled out of the Minnesota statute nor can any claim be made that a judgment as against a non-resident without personal service can be rendered affecting his property further than his property may be taken in attachment. And this brings it within the law that a judgment without personal service against a non-resident, is good so far as it affects the property which is taken and that jurisdiction is acquired to the extent of the property so taken. *Dewey vs. Des Moines, supra, page 203.*

In addition to the remedy in the statute which we have quoted, the probate code of Minnesota permits the filing of a claim for taxes against the estate of a deceased person against whom the tax was assessed.

In re Jefferson, 35 Minn. 215.

On page 217 that Court says:

"It is not material whether a personal tax is a debt in the sense that action against the person may be maintained to re-

cover it. It is at least a claim against the property which survives the death of the person against whom it is levied, and remains a claim against his estate. The statute regards it as a debt to be paid out of the estate. * * * * This, we think, is conclusive that for purpose of proof and payment out of the estate, a personal tax is a debt."

We insist that there is no statute of Minnesota which can be claimed to have, or attempt to have, any extra territorial effect, nor is there any statute which, as to a non-resident pretends to give any judgment, except in so far as any property which attached, will be subjected to the payment of the tax, or which gives any claim in case of the death of the owner of property, whether resident or non-resident, beyond a claim upon the estate which is in process of administration, so that there is no comparison between the law of Iowa, passed upon by this Court in the Dewey case, and the statutes of Minnesota involved in the case at bar.

Again, looking at the reason of the subject, it will not be questioned but that tangible personal property, (leaving out of question now, choses in action) when situate in a state other than that of the owner's domicile, may be taxed in such other state.

Of what use is it to tax property unless some right or remedy exists to enforce the tax? If the state has jurisdiction to tax such property, it must have jurisdiction and power within its own borders to enforce the collection of such tax by appropriate remedy. One appropriate remedy is no doubt, to proceed against the property taxed, but this is not exclusive, and no reason suggests itself why another appropriate remedy may not be to subject any property of the person whose duty it was to pay the tax, if found within the state, to the payment of such tax. If in the enforcement of such remedy proper notice by personal service or attachment of property is given.

It cannot be claimed that the state is limited to its remedy against the specific property taxed, as its destruction or removal would defeat the collection of the tax. Any property in the state must be liable for the tax, and that is all that the

Minnesota statute seeks or attempts, and we submit that a statute could not be more guarded against running counter to the principle of jurisdiction in the Pennoyer case, than is the Minnesota statute.

We do not believe this court meant to hold in the Dewey case that a statute could not provide a remedy by which, in failure of distraint, judgment could be obtained if proper service was had, by which any or all of the owner's property situated in the state, could be taken to satisfy the tax, whether the owner was a resident or non-resident, nor that a statute could not provide a remedy by which the property of a non-resident to the extent of that taken in attachment could be subject to the payment of a tax. To do so would be a practical denial of the right to tax property of non-residents under any circumstances.

By way of illustration, A. residing in the State of New York, sends into the State of Minnesota a drove of cattle to be kept and maintained in that state. Clearly they would be taxable there. After the assessment, but prior to the proceedings to enforce the tax, he sells this drove of cattle and acquires another, which he still owns, and which is still within the territorial limits of the state of Minnesota. Proceedings are taken to collect the tax levied on account of the first drove. Now, there could be no dispute but that under the statutes of the state of Minnesota, this latter drove might be taken by the sheriff upon his warrant, or if not taken upon the warrant, and the citation was issued, they could be attached and subjected to a judgment for the tax. Does this contravene any constitutional right of the owner? If it does, the state would have no remedy, even though the tax was a proper one, and the party on account of whose property it was levied, had abundant property within the state to satisfy it.

We do not think the validity of such a statute can be questioned. The statute undertakes to provide that the obligation to pay the tax may be enforced in a proceeding in which personal service is made upon the taxpayer, or if personal service

cannot be made, then by attachment, to the extent, and only to the extent, of the property seized.

Referring to the property in the case at bar, the situs of the property in question for the purpose of administration was and is in the state of Minnesota. It is in the jurisdiction of the Probate Court of that state; *Wyman v. Halsted 109 U. S. 654.* A claim was filed in that court. Instead of being tried in that court, or on an appeal in the District Court, the issue upon this particular claim and nothing else, was removed to the Circuit Court. That court orders judgment against the estate of Sophia Bristol, which is in effect a judgment of the probate court, to the effect that the claim thus removed is a claim against the estate, and stands and takes the place of, a determination to that effect by the Probate Court.

We submit that the policy of the state, the method of assessment and the collection of taxes are matters wholly within the discretion of the state where the property, to which it applies, is within its jurisdiction. This principle is sanctioned and emphasized and authorities in this court cited in its support in *Kirtland vs. Hotchkiss, 100 U. S. 497.* And, tested by the decisions of this Court, in the case of *Winona & St. Peter Land Co. vs. Minnesota*, and cases there cited, the provisions of the Minnesota statute are ample and insure to the property owner every protection and right, and the fullest opportunity to assert any defense.

The question in the case at bar is, 'Was the property within the jurisdiction of the State of Minnesota?' If it was, the right of Minnesota to tax it is unquestioned, nor does the attempt and manner of taxation involve any constitutional question or right. The question 'Was this property within the jurisdiction of Minnesota?' was a judicial question, a question of mixed law and fact. The Court determined the question in the affirmative. It is that determination which plaintiff in error seeks to reverse; it is that determination that he complains of, and not of any statute of Minnesota as being in contravention of constitutional rights.

DID THE PROPERTY OBTAIN SUCH A SITUS IN MINNESOTA AS TO RENDER IT TAXABLE IN THAT STATE?

The statutory provisions of Minnesota applicable to the case at bar are as follows, referring to the statutes of 1894 (the italics being ours):

"Section 1508. Property subject to taxation. *All real and personal property in this state*, and all personal property of persons residing therein, * * * is subject to taxation, and such property, or the value thereof shall be entered in the list of taxable property for that purpose, in the manner prescribed by this act, * * *

Section 1510. Personal property defined. Personal property shall, for the purpose of taxation, be construed to include all goods, chattels, moneys, *credits* and effects, wheresoever they may be. All ships, boats and vessels belonging to inhabitants of this state, whether at home or abroad, and *all capital* invested therein; all *moneys at interest*, either within or without this state, due the person to be taxed more than he pays interest for, and all other debts due to such persons more than their indebtedness. * * *

Section 1511. * * * The term "credits," wherever used in this act, shall be held to mean and include every claim and demand for money, or other valuable thing; and every annuity or sum of money receivable at stated periods, due or to become due, *and all claims and demands secured by deed or mortgage, due or to become due.* * * *

Section 1514. Listing of real and personal property. All real property in this state, subject to taxation, shall be listed and assessed every even-numbered year, with reference to its value on the first day of May preceding the assessment; and all real estate becoming taxable any intervening year shall be listed and assessed with reference to its value on the first day of May of that year. *Personal property shall be listed and assessed annually*, with reference to its value on the *first day of May.*

Section 1515. Manner of listing personal property. Personal property shall be listed in the following manner.

1st. Every person of full age and sound mind, being a resident of this state, shall list all his moneys, credits, bonds or stock, shares of stock of joint stock of other companies, when the property of such company is not assessed in this state, money loaned or invested, annuities, franchises, royalties and other personal property.

2nd. He shall also list separately, and in the name of his principal, *all moneys* and other personal property *invested, loaned or otherwise controlled* by him as the *agent* or attorney, or on account of any other person or person, company or corporation whatsoever; *and all moneys deposited subject to his order, check or draft* and all credits due from or owing by any person or persons, body, corporate or politic. * * *

Section 1516. Place of listing personal property. Personal property, except such as is required in this act to be listed and assessed otherwise, shall be listed and assessed in the county, town or district where the owner or *agent* resides. * * *

Section 1523. Lists of personal property to be made under oath. Every person required by this act to list property shall make out and deliver to the assessor, when required, a statement, verified by his oath, of all the personal property in his possession *or under his control, and which*, by the provisions of this act, he is required to list for taxation, either as owner or or holder thereof, *or* as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, *agent* or factor.

Section 1524. Valuation to be fixed by Assessor—Items of list. * * 22nd. The amount of credits, other than that of bank, banker, broker or stock jobber. * * *

Section 1525. Examination under oath by assessor—Refusal to answer.

Whenever the assessor shall be of opinion that the person listing property for himself, *or for any other person*, company or corporation, has not made a full, fair and complete list of such property, he may examine such person under oath, in re-

gard to the amount of the property he is required to list; and if such person shall refuse to answer under oath, and a full discovery make, the assessor may list the property of such person or his *principal*, according to his best judgment and information.

Section 1526. Deductions from credits, how made. In making up the amount of credits which any person is required to list for himself, *or for any other person*, company or corporation he shall be entitled to *deduct* from the gross amount thereof, the amount of all bona fide indebtedness by himself, *or of any such person*, company or corporation. * * *

Section 1537. County auditor to furnish books, etc.—list of real property—of mortgages—meetings of assessors.

The county auditor shall annually provide the necessary assessment books and blanks at the expense of the county, for and to correspond with each assessment district. He shall make out, in the real property assessment book, complete lists of all lands or lots subject to taxation, showing the names of the owners, if to him known, and, if unknown, so stated opposite each tract or lot, the number of acres, and the lots or parts of lots or blocks, included in each discription of property. The list of real property becoming subject to assessment and taxation every odd-numbered year may be appended to the personal property assessment book. There shall be appended to *each personal property assessment book a list of all mortgages, or other real estate securities, held, owned or controlled* by residents of the town or district, showing the names of the owners or agents alphabetically arranged, and the amount due on each separate instrument. It is hereby made the duty of the register of deeds to make out such lists according to the records of his office, and deliver them to the county auditor on or before the last Saturday of April in each year. The expenses of such lists shall be paid by the county, on allowance by the county commissioners. The assessment books and blanks shall be in readiness for delivery to the assessors on the last Saturday of April in each year, and the assessors shall meet on that day, at the office of the county auditor, for the purpose of receiving

such books and blanks, and for conference with the auditor in reference to the performance of their duties.

Section 1542. Statement of personal property to be made by owner.

The assessor shall call at the office, place of doing business or residence of each person required by this act to list property, and list his name, and shall require such person to make a correct statement of his taxable property in accordance with the provisions of this act; and every person so required shall enter a true and correct statement of such property, in the form prescribed, which statement shall be signed and verified by the oath of the person listing the property, and delivered to the assessor, who shall thereupon assess the value of such property, and enter the same in his books; provided, if any property is listed or assessed on or after the fourth Monday of June, and before the return of the assessor's books, the same shall be as legal and binding as if listed and assessed before that time.

Section 1544. Refusal to list or swear to statement—Duty of assessor—Oath.

In every case where any person whose duty it is, to list personal property for taxation has refused or neglected to list the same when called on by the assessor for that purpose, or to take and subscribe an oath in regard to the truth of his statement of personal property, or any part thereof, when required by the assessor, the assessor shall enter opposite the name of such person, in an appropriate column, the words "refused to list" or, "refused to swear" as the case may be; and in every case where any person required to list property for taxation has been absent, or unable from sickness to list the same, the assessor shall enter opposite the name of such person, in an appropriate column, the words, "absent," or "sick." The assessor is hereby authorized to administer oaths to all persons who by the provisions of this act are required to swear, or whom he may require to testify in any case, and he may examine upon oath, any person whom he may suppose to have knowl-

edge of the amount or value of the personal property of any person refusing to list or to verify his list of personal property."

These statutory provisions were in force without change during the entire period for which taxes are claimed in this case.

It will be noted that the agents, the McCluers were called upon to list this property each year, except 1893. But they refused to list the same.

Record Folio 90, Page 51.

It will be seen that the statutes of Minnesota do not attempt to fix the *situs* by the mere fact of the domicile of either creditor or debtor, but that as to property owned by a non-resident, the *situs* is fixed at the residence of the agent by the fact that the property is invested, loaned or otherwise controlled by the agent. Nor does it seek, nor is there claimed for the tax provisions of Minnesota, any extra territorial force, but simply that they affect property within the state, invested, loaned or controlled by a resident agent, and it would seem as though this statement would dispose of the proposition urged by plaintiff in error on the trial below, that the domicile of the debtor does not fix the *situs* of the debt, and that tax laws have no extra territorial effect, as neither one of these propositions is involved in the application of the Minnesota statute to the subject matter in this controversy.

The statute of Minnesota as will be seen, provides that all capital invested in the State, all moneys at interest in the State, all moneys deposited in the State subject to the agent's order, and all claims or demands secured by deed or mortgage, is to be assessed under the designation of "credits." under the item of "amount of credits other than that of bank, banker, broker or stock jobber."

The statute does not discriminate against non-residents, but allows the agent of a non-resident to make the same deductions that are allowed to a resident.

The right of the Legislature of Minnesota to prescribe the designation under which any form of property shall be assessed, must, of course, be conceded as an unquestioned right.

Savings Society vs. Multnomah County, 169 U. S. 421.

The provisions of the Minnesota statutes were construed by the Supreme Court of Minnesota *In re Jefferson, 35 Minn, 215*, involving the taxation of the same property, or at least a part of the same property now in question, and it was held that the statute included credits due non-residents, which, by the course of business relating to the investment, control and management of the same, had obtained a *situs* in this State.

The Court further held that the property in question had obtained such a *situs* in Minnesota, as rendered it subject to taxation.

Counsel for plaintiff in error, contended in the court below that there was an irreconcilable conflict of authority upon the question decided by the Supreme Court of Minnesota in the case last cited. We think the apparent conflict of authority is readily explained when we consider the facts involved, the statutes construed, and the results sought for in the several apparent conflicting decisions.

First. There is one line of decisions arising in cases where it was sought to tax in the state of the owner's domicile securities upon property situated in other states. Such casess are,

Kirkland vs. Hotchkiss, 100 U. S. 491.

State ex. rel. Dwinnell vs. Gaylord, 73 Wis. 316.

Darcy vs. Darcy, 51 N. J. Law, 140.

Commonwealth vs. American Dredging Co. 122 Pa., State 386, and the list might be greatly extended. In this class of cases the question was whether the owner of such securities might be taxed in the state of his domicile, and to hold that he could be so taxed, does not in any manner conflict with the well settled principle that property of this kind may have such a *situs*, and by statutory provision be taxable in a state other than that in which the owner resides.

And the property may even be taxed in both states.

Second. There is another line of decisions like the case of *People ex. rel. Jefferson vs. Gardner, 51 Barbour, 353*, where Jefferson was assessed in the Village of Warsau, New York, for mortgage loans taken by agents in Illinois and Wisconsin, in a manner similar to the the loans made by McCluer in the case at bar, and resisted the tax, claiming the loans so made had their *situs* in such states, being permanently invested and managed there by such agents, and properly taxable where such agents resided, and the Supreme Court of New York held such property was not taxable in New York, and the case of *People ex. rel. Jefferson vs. Smith, 88 N. Y. 576* already referred to.

The effect of these decisions is, construing the statutes of the state of of the owner's domicile, in the light of the *situs* of the property in a foreign state, that the property is not taxable in the state of the owner's domicile, Surely this does not conflict with the principle that the property may acquire such a *situs* as to be taxable in the foreign state. And the property may be taxed in both states.

Coe vs. Errol, 116 U. S. 517.

Third. There is another line of decisions like *Herron vs. Keeran, 59 Ind. 472*, which hold that property merely in the hands of an agent for transitory purposes, like a note for collection, is not taxable where the agent resides. Clearly such decisions do not conflict with the principle that when such property has become permanently located so as to acquire a legal *situs* in another state, it can be taxed there.

Fourth. There is another line of decisions like *Railroad Company vs. Jackson, 7 Wall. 262*, and case of *State Tax on Foreign-held Bonds. 15 Wall, 300*, where the right to tax a non-resident bond holder on account of the road being in part in the state seeking to tax was denied. No question of the property of the non-resident having by a course of business acquired a *situs* in the state other than that of the owners domicile was raised or involved. Nor are such decisions in conflict with

the entirely different proposition that the owner may give his property such a *situs*.

Nor is the doctrine laid down in *Erie Railroad vs. Penn. 153 U. S. 628*, cited by plaintiff in error, adverse to the rule we contend for in the case at bar. In fact, it has no application. There the Court held that Pennsylvania could not impose upon the railroad company the duty when paying, in the City of New York, interest, of deducting from the interest the amount assessed in Pennsylvania upon the bond, and that the act under consideration impaired the obligation of a contract.

Fifth. Again there is a line of decisions holding that the property may, and in the cases referred to, did acquire such a *situs* in the state where the agent resided, as to render it taxable, which we shall cite, and which will be considered more at length.

All of these propositions are in perfect harmony and involve no conflict of principle, nor has their adjudication led to any conflict of authority. In fact, in many of the decisions above referred to, notably in the case of *State Tax on Foreign Held Bonds, Herron vs. Keeran, 59 Ind. 472, Commonwealth vs. American Dredging Co., 122 Pa. St. 386, People ex. rel. Jefferson vs. Gardner, 51 Barbour 313*, and *People ex. rel. Jefferson vs. Smith, 88 N. Y. 576*, it is expressly stated that such property may acquire such a *situs* as to become taxable in a state other than that of the owner's domicile.

Upon the proposition that property of the character involved in this suit, may be given by its owner a *situs* in a state other than that of the owner's domicile, *Catlin vs. Hull, 21 Ver. 152*, is among the earliest, where it was held that debts owned by a resident of New York, under the control and management of an agent in Vermont, were taxable in the latter state, and that the legal fiction that the domicile of the owner is the *situs* of the property, has no force where the question is one of taxation, and the property is in fact in a state other than that of the owner's domicile.

Supervisors vs. Davenport, 40 Ill. 197, is in support of this doctrine. Also,

Redman vs. Commissioners, 87 N. C. 122.

People vs. Insurance Company 29, California 533.

Goldgart vs. The People, 106 Ill. 21.

Hutchinson vs. The Board, 66 Iowa, 35.

where the money loaned belonged to a citizen of England, but the Court held that it being under the exclusive control of an agent, the attempt to tax in Iowa should be sustained.

Other cases sustaining this doctrine may be cited.

St. Louis vs. Ferry Co., 11 Wall. 423.

Pullman Car Co. vs. Pennsylvania, 141 U. S. 18.

where this Court say:

"For the purpose of taxation, as has been repeatedly affirmed by this Court, personal property may be separated from its owner, and he may be taxed on its account in the place where it is, although not the place of his domicile, and even if he is not a citizen or resident of the state which imposes the tax." (p. 22.)

In this case there was a dissenting opinion, but the dissenting opinion did not go to the proposition here involved. On page 31, Justice Bradley, speaking for the dissenting justices, says:

"But when personal property is permanently located in a state for the purpose of ordinary uses or sale, then indeed it is subject to the law of the state, and to taxation, as well when owned by persons residing out of the state as when owned by persons residing in the state. It has then acquired a *situs* in the state where it is found."

And in the case of *Coe vs. Errol, 116 U. S. 517*, the fact that it is taxed in the state of the owner's domicile, does not defeat the right of the state in which the property has a *situs* to tax it also.

In *Wilcox vs. Ellis, 15 Kan. 588*, the plaintiff resided in Kansas and sold land in Illinois, taking notes which were deposited in the bank in Illinois, to be canceled and delivered as

paid. The attempt was made to tax these notes in Kansas, but the Court held they were not taxable in that State.

In *Fisher vs. Commissioners, 19 Kan. 14*, the case was similar except that the land was in Iowa, and it was again held that the notes were not taxable in Kansas.

State vs. St. Louis County, 47 Mo. 594.

A resident of Illinois at the time of his death, owned bonds issued by an association in St. Louis. In this case the bonds were listed and taxed at his domicile in Illinois. Ancillary administration being taken out in Missouri, the bonds were held taxable in Missouri in the hands of the administrator.

The Court, reviewing the authorities from *Catlin vs. Hull* down say:

"In no sense can the assets be said to be in the hands of a foreign administrator. It does not matter whether or not they may have been transmitted, or rather the evidence and representations in the shape of bonds and notes, from such administrator to the local administrator."

In *Curtiss vs. Ward, 58 Mo. 295*, the same rule was announced. In *Poppleton vs. Yamhill County, 18 Or., 274* a citizen of Oregon had sent money to be loaned in Washington. The notes were retained in Washington, and an attempt was made to tax them in Oregon. The Court decided they were not taxable in Oregon, and gave as its reasons, among other things,

"The money, notes and mortgages were undoubtedly subject to taxation in Washington Territory. The right to tax them there is sustained by a line of decisions by the courts on the subject, since the one made in *Catlin vs. Hull* down to the present time, and they are undoubtedly correct in principle."

Billinghurst vs. Spink County, 5 S. Dak. 84, where it is said:

"A non-resident who sends money into this state, and surrenders its possession and control to agents, fully authorized to loan, invest and manage the same, subjects such property to the jurisdiction of this state for the purpose of taxation, and the

legal fiction that the *situs* of such property is at the domicile of the owner, yields to the requirements of justice."

Finch vs. York County, 19 Neb. 50.

The plaintiff, a resident of New York, came to Nebraska bringing money which he loaned to citizens of that state, taking notes and mortgages to secure the same. When he returned, he left his notes and mortgages, and his interest connected with the money, in the hands of agents in Nebraska, giving them authority to collect and re-loan the same. The Court held the debts taxable in Nebraska.

The Court say:

"The power of the legislature to separate for the purpose of taxation, the *situs* of personal property, whether of a tangible nature, or in the form of a chose in action, from the domicile of the owner, is unquestioned, and if such property in any form is within its jurisdiction, it may tax it."

In *Bowman vs. Boyd, 21 Nev. 281*, the plaintiff was a resident of California, but had little property there, making most of his investment in the shape of mortgage investments in Nevada. He escaped taxation in California, on his personal property on the plea that it was situate in Nevada. The Court of Nevada held that he could not be allowed to entirely escape taxation on his personal property, and held that his only business was conducted in Nevada, the investments in making which his business consisted, were properly taxable in that state, citing *Board vs. Davenport, 40 Ill. 197.*

Dundee Mortgage Co. vs. School District, 19 Fed. 359.

cited with approval in *Savings Society vs. Multnomah Co., infra* is also in point.

It was claimed on the argument below that the case of *State Tax on Foreign Held Bonds, and Kirtland vs. Hotchkiss* were opposed to our contention. We have already referred to the case of *State Tax on Foreign Held Bonds, and Kirtland vs. Hotchkiss* still less applies to the case at bar. In the latter case, the question was not the taxability of the property in

Illinois, but the question of its taxability in Connecticut, and this court in the recent case of *Savings and Loan Society vs. Multnomah County, infra*, has declared that there was nothing in the Kirtland case which would be opposed to the taxability of the property in the state of Illinois. On the contrary, as we have already shown, this Court has declared that it is a settled rule in this Court that for the pupose of taxation, personal property may be separated from its owner. And the case of *Tappin vs. Merchants' National Bank, 19 Wall. 490*, was cited by both the Missouri and Nebraska courts, in the decisions we have referred to in support of their position.

The case of *Walker vs. Jack*, decided by the Circuit Court of Appeals, Sixth Circuit, 88 Fed. Rep. 576, sustains the proposition for which we contend.

The case of *Adams Express Company vs. Ohio, 165 U. S. 194*, lays down principles in line with our proposition, but the latest and most decisive case is *Savings Society vs. Multnomah County, 169 U. S. 421*, and is decisive of this question, if it was not already firmly established by the cases cited in that opinion. The fact that the statute of Oregon taxed the mortgage and debt under the designation of real estate, can make no difference. Under the laws of Oregon, a mortgage as stated by this court, conveys no legal title, and creates only a lien, a security for the debt, and we assert without fear of contradiction, that such is the law of Minnesota. Under the Oregon statute, the mortgage and debt are taxed as land. In Minnesota they are designated and taxed as credits. No one can question the right of the legislature to place any designation upon them that it pleases. In Oregon the mortgagee could deduct the mortgage debt from his assessment, under the Minnesota law both debtor and creditor, resident and non-resident, may deduct from his credits all *bona fide* indebtedness. The law of Minnesota has never recognized the system of deducting debts secured by mortgage on real estate, from the value of the real estate, either as to residents or non-residents, but has seen fit to provide a system of deducting from credits all *bona fide* indebtedness. This is purely a question of state policy.

And in any event, the mortgagee cannot complain of the policy. If a state sees fit to allow a mortgagor to deduct from the value of his real estate, the amount of the mortgage which he has placed upon it, he would be the gainer. If the state does not allow him to make such deduction, he might be said to be the loser, but in neither event does it make any difference to the mortgagee; neither has he any right to complain. It is enough to say that the mortgagee is in no position to complain of the policy, and, if it was material to this discussion, a complete answer to any suggestion that the policy is open to criticism is found in the bare statement that all persons owning similar property are taxed alike.

Tappin vs. Merchants' National Bank, 11 Wall. 490-504.

The only difference between the two states in this respect is that in Oregon, all mortgage debts are taxed without regard to the business course of the management of the property, while in Minnesota, as to non-residents, the property must be *invested, loaned or controlled* by an agent. This too isa mere question of state policy.

The Supreme Court of Minnesota, under the statutes involved in this case, and as to the same fund but for different years, held the property was taxable and this we understand would be decisive, especially as to the scope and affect of the statute when the same is under consideration by this Court.

State Railroad Tax Cases, 92 U. S. 575.

Chicago etc. Railway Co. vs. Minnesota, 134 U. S. 418.

Palmer vs. McMahon, 133 U.S. 660.

Adams Express Co. vs. Ohio, 165 U. S. 194.

During the lifetime of Cyrus Jefferson then, this property, as judicially determined by the Supreme Court of Minnesota, acquired such a *situs* as rendered it taxable in that state. Upon his death and succeeding to the property Mrs. Bristol, continuing the same course of business and management, the *situs* remained the same. The *situs* of this property thus having been fixed and established in Stillwater, the mere temporary removal of the notes to New York, under the circum-

stances surrounding such removal, the fact that tax litigation as to the same was then pending, that they were subject to be returned and were in fact returned upon call of the McCluers, to Stillwater from time to time, there payable, paid, renewed or foreclosed and in short, that all business relating to them, and all use thereof for any purpose whatever was transacted and had in Stillwater, could hardly be said to in any manner affect or change the *situs* thereof.

While the notes were sent east in 1885, yet the agent in Minnesota was clothed with more authority, and a more absolute management and control of the business after the death of Cyrus Jefferson, than before, by the execution of the power of attorney by Mrs. Bristol, which continued in force down to 1890, so that while from 1885 to 1890 the notes were sent east, yet, during all that time, the existence of the power of attorney would, it seems to us, actually add to the localization of the business in Minnesota.

It must be remembered that the business of negotiating loans, re-loaning and re-investing the money collected, continued after the notes were sent east in all respects as theretofore, and glancing at the amounts standing for the several years after 1885, it will be seen that there was no material decrease in the volume of the business. (Record page 48, folio 86). The agents continued to exercise the same control as theretofore, with additional authority, until 1890, of a power of attorney. We feel justified in urging that the sending of the notes east after the former litigation had commenced in Minnesota, was at the most, a mere subterfuge; the act was not accompanied by any change in the nature of the business. For ten years, the time covered by this proceeding, it continued practically the same, and the removal was, of necessity, merely temporary. They were still made payable, and all payments of interest and principal were paid at the office of the agents in Stillwater. They were as much subject to the control of the agents as ever, they were subject to be, and were in fact, returned to Minnesota whenever the agents required them in the prosecution and management of the loan business.

It was the fact that the property thus obtained a permanent character in Minnesota, was loaned and re-loaned, invested and re-invested by the agents in short that the indebtedness was created and remained there, that gave it a *situs* in that state.

The notes are but evidence of the debt. Nor are they sole evidence. If destroyed, the debt could still be established and enforced. It is *the right, the credit, the debt*, which is the property to be taxed.

In *Dundee Mortgage Co. vs. School District, 19 Fed. 359*, the notes were payable at Dundee. The notes and mortgages, after being executed, were transmitted to the home office at Dundee, where they were kept until the borrower desired to pay the same, when they were returned to Oregon for that purpose.

To the same effect is *Mumford vs. Sewell, 11 Or. 76.*

In *Board vs. Davenport, 40 Ill. 197*, the court held that the return of the papers to New York was a matter of no importance.

In *Finch vs. County of York, supra*, the court ignored, as un-important, the fact that the evidence of indebtedness was not in Nebraska.

In *Hutchinson vs. Board of Equilization, 66 Iowa, 35*, the agent made a note to his principals which being designed solely for the purpose of avoiding taxation, failed to accomplish that purpose.

In *Jones vs. Seward, 10 Neb. 154*, a banker purchased bonds with the money ordinarily used in his banking business, and the Court held that it was a mere devise, fraudulent and

"Where a change is thus made for the sole purpose of defrauding the government, the party making it cannot shelter himself behind such temporary change."

To the same effect is *Mitchell vs. Board of Commissioners 91 U. S. 206.*

That the *situs* of the debt is not to be determined alone by the place where the evidence of the debt happened to be:

Wyman vs. Halstead, 109 U. S. 654. See page 656.

Johnson vs. Oregon City, 2 Ore. 327.

holds that loans made by a non-resident are taxable inthe State of Oregon under the statute providing for the taxation of property actually within the state, even though the notes and mortgages are deposited outside.

In fact, it would be very difficult to improve either upon the logic or the language of the Circuit Court in the case at bar, where it is said:

"The fact that after March, 1885, the notes were sent to Mrs. Bristol in New York, made no difference. Whether she she regarded the notes as safer in her custody in New York State, or had them sent in the hope of avoiding taxation in Minnesota, is immaterial, the business remained under the full management and control of the agents at Stillwater beyond doubt. The very notes were made payable at the office of these agents at Stillwater, and were returned there for the payment, renewal, foreclosure of securities, etc."

WAS THE RIGHT TO FILE THE CLAIM BARRED BY THE STATUTE OF LIMITATIONS.

One question remains to be considered. Counsel for plaintiff in error in their brief raise the point that the remedy for the collection of the taxes for the years 1883 to 1888, inclusive, was barred by the Statute of Limitations of the State of Minnesota. We respectfully insist that this question cannot be raised at this time. It was not included in any of the assignments of error in the transcript or record. It is true it was suggested in the answer, but the record fails to disclose that it was insisted upon at the trial and the opinion of the District Judge does not mention it, no exception is taken to any ruling upon it, and no assignment was taken upon that ground, and it cannot be said to fall within that class of plain errors which the court will notice, and consequently it is too late now to raise it

However, we submit there is no force in the claim. During all the time in question, Sophia Bristol during her life

time, and James Bristol, were residents and citizens of New York State, and had no property in ~~said State~~ Minnesota other than that taxable sought to be taxed.

Findings, Page 43 and 45, of Record.

Section 5142 of the Statutes of Minnesota reads as follows:

"If when a cause of action accrues against a person, he is out of the state, the action may be commenced within the times herein limited after his return to the state, and if after the cause of action accrues, he departs from and resides out of the state, the time of his absence is not a part of the time limited for the commencement of this action."

It will be seen from the foregoing that the statute of limitations in Minnesota does not run against a right of action while the party against whom the right is claimed, is out of the state when the cause of action accrues.

We now come to Section 1567 which provides:

"All unpaid personal property taxes shall be deemed delinquent on the 1st day of March, next after they become due. * * * On the 1st day of April in each and every year, the County Treasurer shall make a list of all such delinquent personal property taxes which he shall certify to the Clerk of the District Court, and the said Clerk shall immediately issue his warrants to the Sheriff of the County, directing him to proceed to collect the same, and if such taxes are not paid upon demand, said Sheriff shall *distrain* sufficient goods and chattels belonging to the person charged with such taxes, if found within the County."

The language is, "shall distrain the goods and chattles." There is no provision for service of any process upon the delinquent tax payer at this point.

Now, it is elementary that nothing can be taken in distraint but tangible property, capable of seizure.

Mitchell vs. Coats, 47 Pa. St. 202.

Davis vs. Arledge, 3 Hill (S. C.) 170.

In the latter case Earle, J. after holding that books of

account of a merchant are within the spirit of an exemption law, says:

"But there is a more conclusive reason why they are not liable to seizure, * * * and indeed, they are not goods and chattels in the ordinary sense of the words, but merely evidence of debt, choses in action, which we think, have never been liable to distress for rent, any more than to be taken in execution."

It would require very plain statutory authority and ample provisions as to the detail of the procedure, to seize credits upon distraint.

Now, during all the time covered by these proceedings, there was no tangible property in Minnesota belonging to Sophia Bristol. Even the money which might be on hand in the possession of the McCluers, was in their name, mingled with their own, and certainly not to be thought of as the subject of distraint.

The Statute proceeds further. After providing for the return of the tax warrant and the review of the delinquent list by the commissioners, Section 1569 provides:

"Within ten days after the adjournment of the board of commissioners, the auditor shall file a copy of said revised list with the Clerk of the district court of the county, and within ten days after the filing of such copy, the clerk shall issue and deliver to the sheriff of the county where the person, against whom such tax is claimed, may at the time reside, or be for service, a citation to each delinquent named on the list, stating the amount of the tax and penalty, and requiring such delinquent to appear on the first day of the next general term of the district court in the county appointed to be held at a time not less than thirty days after the issuance of such citation, and show cause, if any there be, why he should not pay said tax and penalty, and if he fails to pay said tax, penalty and cost to the sheriff before the first day of the term or on said day to show cause as aforesaid, the court shall direct the clerk to enter judgment against such delinquent for the amount of such tax, penalty and cost."

It will be seen that this last section makes provision for the first step in the nature of a judicial proceeding to enforce the tax. The citation issues requiring the party to show cause pursuant to which he may interpose his objections and defence.

The issuing of the warrant under Section 1567 is not the commencement of any proceeding against the party, no provision for its service or for the party to make or meet any issue on it, but it is the citation issued under Section 1569 after return of warrant, which is really the commencement of the proceeding upon which, and only upon which, a judgment can be finally rendered.

Counsel are in error when they say,

"From the foregoing statutes it appears that if taxes were valid, Washington County had the right to proceed to distrain the property and enforce the lien thereon, on the first day of April following the year when the tax was assessed and levied in each year," for the reason there was no lien at that time, and there was no property of the character subject to distraint. They are correct, however, when, following the language above quoted, they say, that,

"It had the right to cite the person taxed into court, and apply for personal judgment in the month of July in each year, after the tax was levied and assessed."

That was the first point in the proceedings when they could take steps looking to a judgment, but where were the parties then? In New York, and being there, no process could be served and the statute did not run.

What the Supreme Court of Minnesota held in the *Redwood County Case, 40 Minn., 512*, is,

"A tax being a liability created by statute, and the filing of the delinquent list being as the statute declares, and as we have held, the institution of the action against the land for the recovery of the tax appearing against it on the list, and inasmuch as the nature of the right sought to be enforced and not method of proceedure is the test, we are unable to see why it should make any difference whether the action is *in rem*, or *in*

in personam, against the property, instead of against its owner."

We have therefore come to the conclusion that these proceedings are within the meaning of the statate, "An action upon a liability created by statute" and are barred as to all taxes for the enforcement of which such proceedings might have been instituted more than six years before the commencement of the present proceeding had such taxes been assessed within the proper years.

In the case at bar, the taxes were regularly assessed each year and all that could be claimed under the statute quoted, and the facts of the present case is, that the right of action would be barred six years from the time when the action or proceeding could be commenced by the issuance of a citation for the purpose of obtaining a judgment, provided the party was within the state. The case differs from the Redwood County case in this: There the proceeding was to be instituted directly against the property taxed, and could never affect the person directly or any other property; while here the object of the proceedings under the citation is to fix the obligation of the party against whom the citation issues and subject other property of such person within the state, to the payment of the tax.

Conceding all that is decided in the Redwood case, the fact remains that during all the time subsequent to the date when the proceedings could have been instituted for any of the years in question, Sophia Bristol during her life time, and James Bristol, until he appeared in Minnesota, in probate proceedings, were without the State of Minnesota. While the assessment of the tax might be said to be a proceeding *in rem* it becomes a proceeding *in personam* when it reaches the stage where process issues to bring the party into court, and determine an issue and obtain a judgment. When the proceeding reached the point where distraint could be made, there was no tangible property the subject of distraint. When it reached the point when the right to proceed *in personam*, accrued, the person was without the state. Nor does the fact that after the right to proceed *in personam*

accrued no action could be brought on account of the absence of the party, defeat the right to bring the action when service cau be made. If there was no provision for further proceeding, still there would be a valid tax constituting a statutory liability, which in the absence of any law providing any other method, might be enforced by an ordinary personal action.

County of Redwood vs. Land Co., 40 Minn. 512.

And it follows that such action could be brought whenever the party came within the jurisdiction of the state, and the statute of limitation does not apply where the party is without the state. And the fact that they had to come within the jurisdiction of Minnesota in probate proceedings, may be fairly urged as an additional reason why the *situs* of the property may be said to be in Minnesota.

It is respectfully submitted that the judgment appealed from should be affirmed.

N. H. CLAPP,
MOSES E. CLAPP,
Counsel for Defendant in Error.

SUPREME COURT U. S.
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JAN 13 1900
JAMES H. MCKENNEY,
Clerk.

No. 109.

Motion to dismiss or affirm

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Jan. 19, 1900.

No. 109.

JAMES BRISTOL, as Executor of the Last Will and Testament of Sophia M. Bristol, Deceased, Plaintiff in Error,

vs.

WASHINGTON COUNTY, STATE OF MINNESOTA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

MOTIONS OF DEFENDANT IN ERROR TO DISMISS OR AFFIRM.

George H. Sullivan,
Moses E. Clapp,
Counsel for Defendant in Error.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

JAMES BRISTOL, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF SOPHIA M. BRISTOL, DECEASED, PLAINTIFF IN ERROR,

vs.

WASHINGTON COUNTY, STATE OF MINNESOTA.

MOTIONS TO DISMISS OR AFFIRM.

Now comes the defendant in error in the above-entitled cause and respectfully moves the court to dismiss the writ of error and affirm the judgment of the circuit court for the following reasons:

This court has no jurisdiction to review the decision of the circuit court in the case at bar. Its jurisdiction is invoked by the plaintiff in error upon the grounds that it falls within the provisions of section 5 of the act of March 3, 1891. The language of that act important to quote here is as follows:

"In any case that involves the construction or application of the Constitution of the United States * * * in any case in which the constitution or the law of a State is claimed to be in contravention of the Constitution of the United States."

Plaintiff in error, in its answer after this matter was removed from the probate court of Minnesota to the circuit court, set up that the *tax proceeding* was in violation of the Federal Constitution; that it deprived the plaintiff in error of property without due process of law; that it was a taking for a public use without compensation; that it was in violation of the fourteenth amendment of the Constitution (Record, p. 34).

While these allegations exist in the answer, we challenge the record to show the claim that any law of Minnesota contravenes the Federal Constitution as even a colorable claim.

The facts stated very briefly are: Sophia M. Bristol, the testatrix of plaintiff in error, loaned money in Minnesota through an agent who invested, collected, and reinvested the same in such a manner as to constitute the same a permanent business and investment in Minnesota. Such agent had power to invest, collect, and reinvest all loans and investments. Defendant in error contended that such course of business and investment gave such property a situs in Minnesota and subjected such property to taxation in Minnesota. When Sophia M. Bristol died her estate was probated in Minnesota, and defendant in error filed its claim for taxes in said probate court, and plaintiff in error then removed the matter of said claim to the circuit court. That court determined that the course of business gave such property a situs for taxation in Minnesota, and that the claim was valid, and allowed the same against said estate. That was the only question determined by the court (page 38, folio 70, Record), and the only question necessary to the determination of the case.

Thereupon plaintiff in error removed the cause to this court by writ of error.

While the answer filed by plaintiff in error contained the allegations we have referred to, we submit that the record fails to show the existence of any statute of Minnesota re-

lied on by defendant in error which contravenes any provisions of the Federal Constitution. We insist that it is not enough to merely set up a claim under the Federal Constitution, but the record must show that some law of the State is in contravention of the Constitution, the claim must be a colorable claim (Penn. Mutual Life Ins. Co. *vs.* Austin, 168 U. S., 685–695).

We submit that no attempt has been made to show that such is the fact in the case at bar, nor do we think the assignments of error raise the question, the assignments of error being pages 54 and 55, Record.

Nor does the answer filed by plaintiff in error help him. It is first claimed that the law of Minnesota is in violation of the constitution of the *State of Minnesota*, and it is then claimed that the *assessment, levy, and collection of the taxes* is in contravention of the Constitution of the United States (Record, p. 34). No law of Minnesota is claimed to be in violation of the Federal Constitution, nor is our contention a technical one, for the record and brief of plaintiff in error show that the real contention is the court's construction of law and determination of fact.

An examination of the assignments fails to show any statute or law of Minnesota which it is claimed contravenes the Federal Constitution, nor does the record disclose elsewhere that complaint was made of any statute having that effect, and the most that can be said of the decision itself is where it recites that "the Law of Minnesota, chapter 11, section 1, which provides that all real and personal property in the State is subject to taxation is certainly broad enough to include personal property of every kind belonging to non-residents having a situs in the State of Minnesota" (page 39 of the Record). Certainly this does not bring it within the act of 1891.

In short, the issue was one of mixed law and fact—first, whether the property had a situs in Minnesota; second, whether the laws of Minnesota applied to and taxed that

class of property. The cases cited by plaintiff in error in support of jurisdiction we think do not apply.

The case of Dewey *vs.* Des Moines, 173 U. S., 193, was the case where a statute of Iowa authorized an assessment upon real estate for local improvements and made such assessment a personal judgment against non-resident owners without notice or service of process.

The case of Savings Society *vs.* Multnomah County, 169 U. S., 421, was one in which it appears from the record that the statute of such State was directly assailed as contravening the Constitution of the United States.

In the case at bar, as we have already suggested, no statute has been pointed out as contravening the Federal Constitution. The question at bar is, was the property in the State of Minnesota? If it was, then the right of Minnesota to tax it is unquestioned and the method of taxation not the subject of review here. The court found that the property had acquired a situs in Minnesota. It is that letermination which the plaintiff in error seeks to reverse. It is that determination which he complains of, and his remedy should, we think, have been by appeal to the circuit court of appeals, and we respectfully submit that our motion to dismiss or affirm should be granted.

GEORGE H. SULLIVAN,
MOSES E. CLAPP,
Counsel for Defendant in Error.

No. 109.

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No. 109.

JAMES BRISTOL, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF SOPHIA M. BRISTOL, DECEASED, PLAINTIFF IN ERROR,

vs.

WASHINGTON COUNTY, MINNESOTA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

SUPPLEMENTAL BRIEF FOR THE DEFENDANT IN ERROR.

GEORGE H. SULLIVAN,
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Counsel for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-22-1900

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 109.

JAMES BRISTOL, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF SOPHIA M. BRISTOL, DECEASED, PLAINTIFF IN ERROR,

vs.

WASHINGTON COUNTY, STATE OF MINNESOTA, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

Supplemental Brief for Defendant in Error.

We feel that some statements made in our brief may be stated more clearly than as therein stated, and some points made by plaintiff in error may require a more thorough discussion, and therefore have filed this supplemental brief.

I.

The statement of the law of Minnesota, found on page 10 of our brief, while it is a correct statement of the law, may not be as plain as it might be stated.

Under the law of Minnesota, taxes may be levied against personal property within its territorial limits owned by a resident or non-resident. If not paid, a warrant of distraint may be issued against the specific property taxed, if it is the subject of distraint. If the warrant is returned unsatisfied, a citation is issued, which is in effect a summons requiring the party to show cause why the tax should not be paid, and to this summons defense may be interposed, among other things, that the property was not subject to taxation. This summons must be served either personally or by attachment and publication. If the service is personal, a judgment may be rendered, upon which execution may issue against any of the defendant's property situate in Minnesota. If the service is by attachment and publication, judgment may be entered, but the execution issued thereon can only be levied upon the specific property attached; or if the owner dies, the claim for taxes may be filed in the probate court as a claim against the estate, and, if allowed, it becomes a charge only against the property of the estate in Minnesota within the jurisdiction of the probate court where the claim is filed.

These provisions apply equally and alike to residents and non-residents.

II.

We next refer to the fact that in the brief of plaintiff in error the point is constantly urged that under the laws of Minnesota a personal judgment may be rendered against a non-resident. In that connection counsel make the suggestions:

(*a.*) That in the case at bar the record does not show that the property taxed was comprised in the inventory filed in the probate court.

(*b.*) That there are not sufficient allegations in the complaint to sustain an action *in rem* against the property. It

is not alleged or found that the property taxed was in court or in existence.

(*c.*) That the judgment rendered was a personal judgment.

And on page 28 the claim is made that the judgment has been rendered against the representative of the estate and not against the property. This latter statement is, of course, clearly a mistake, as the judgment is against the estate of Sophia Bristol (Record, p. 46), but running through their brief is the constantly reiterated statement that the judgment is a personal judgment.

We discuss this question with its subdivisions on page 19 of our brief, but feel that perhaps it should receive further discussion. The two suggestions *a* and *b* may be discussed together. The fact that counsel insists that the record fails to show that the credits against which the taxes were assessed are not comprised in the inventory, and that there is no allegation that the property taxed was in court, shows, we think, a misapprehension of the force and scope of the judgment that was entered and of the character of the proceedings in the case at bar. Of course this proceeding arose and was instituted in the probate court by the plaintiff in error applying for ancillary administration on the estate in Minnesota.

The plaintiff in error filed an inventory. This would give the probate court jurisdiction beyond any question. Plaintiff in error, on the last page of their brief, state that the property has at all times since the levy of the taxes been as much within the State as it was at the time the taxes were levied, and the whole proceeding bears out this statement. If it is desired to emphasize the fact that plaintiff in error omitted to list this property in his first inventory, we have no objection. It is wholly immaterial, inasmuch as his mere petition for letters of ancillary administration

would give the probate court jurisdiction. After the probate court acquired jurisdiction by the filing of the petition, the plaintiff in error removed the question of the validity of this claim to the circuit court of the United States. If the probate court had jurisdiction, surely the circuit court had jurisdiction, to determine the validity of this claim. Now, whether there is property which can be reached under the judgment of the circuit court to satisfy this claim, or how much property there is which can be reached, or in what manner such property may be reached, are questions that cannot arise until we come to enforce the judgment. These questions have no relation whatever to the rendition of the judgment itself. These questions are not involved in the adjudication by the court. The court having jurisdiction can only render its judgment allowing the claim as a valid claim against the estate, and the question of whether there is any or sufficient property to satisfy it will arise when we seek its enforcement.

At the time the consideration of this claim was removed to the circuit court, the only inventory filed was the one referred to in the record. It was perfectly competent for defendant in error to require the plaintiff in error to file an additional inventory embracing the credits taxed, or to file a bond in lieu thereof.

The record of proceedings in the probate court since the removal of this claim to the circuit court was not removed to the circuit court, and is not in the record before this court in this case, nor was the judgment in the case at bar a personal judgment in the sense in which the expression is so often used by plaintiff in error.

As we have pointed out in our original brief and restated here, there is no law of Minnesota which suggests that a judgment can be obtained in that State against any person, resident or non-resident, except upon personal service or, in case of service, by attachment and publication; and in the latter case it can only be enforced tot he extent of the prop-

erty seized by attachment; and the law makes no distinction between residents and non-residents. The very most that could be claimed for the tax law of Minnesota is that property other than that against which the tax is levied may be taken to pay the tax if found within the State, either upon a judgment obtained in an action commenced by personal service or, if commenced by attachment, is limited to the property attached.

In the case at bar jurisdiction was obtained by plaintiff in error filing his petition in probate court. Under the law and decisions of Minnesota, probate proceedings are proceedings *in rem*.

McNamara *vs.* Casserly, 61 Minnesota, 335–343.
Woerner on American Law Administration, 2d edition, p. 336.

The case at bar was one of ancillary administration of the estate of Sophia M. Bristol. Had the determination of the claim of defendant in error remained in probate court, and been allowed by that court, the order, determination, or judgment allowing it could only have had effect and operate upon property in Minnesota within the jurisdiction of the probate court. Such allowance could not affect the executor personally, nor any other executor or administrator or property of the estate situate in any other State, country, or jurisdiction.

Johnson *vs.* Powers, 139 U. S., 156.
Stacy *vs.* Thrasher, 6 How. U. S., 44.
Woerner on Am. Law Admin., 2d ed., p. *361.

Did the removal of the question as to the validity of the claim of defendant in error from the probate court to the circuit court of the United States confer upon the latter court any other or further jurisdiction than that possessed by the probate court? Does the judgment in the case at bar have any more effect, either extra territorially as a personal

judgment or otherwise, than if it were the order of the probate court allowing the claim? Is it anything more in scope and effect than an order or judgment allowing the claim against the estate?

It may be a question whether the judgment of the circuit court could be enforced in that court beyond the bond given on appeal, or whether it should be enforced in the probate court. Certainly the administration of the estate of Sophia M. Bristol, the marshaling of assets, payment of claims, and final distribution of assets remain with the probate court, and, as we have already suggested, the judgment of the circuit court is nothing more than the allowance of the claim.

While the allowance of a claim in probate court may be said to be a judgment, it is only an adjudication that the claim is a valid one against and should be paid out of the assets of the estate. Such a judgment is in no sense a personal judgment within the usual meaning of the term "personal judgment," or in the sense that a general execution could be issued thereon. It only binds the property of the estate within the jurisdiction of the probate court rendering it, and is not binding against the executor or administrator personally, nor against the executor of the estate or property of the estate within any other State, country, or jurisdiction.

If this proceeding had remained in probate court, under the law of Minnesota the most that court could have done would have been to have made an order allowing the claim and requiring its payment out of the property of the estate within its jurisdiction. If the plaintiff in error, by removing the claim to the circuit court of the United States and under a judgment in the form of which he has stipulated, is bound further than he would have been had the claim remained in probate court, he should not be heard to complain.

As a further and final answer to criticisms of counsel as

to the form of the judgment, we beg to call the attention of the court to the fact that the judgment in this case as to form was stipulated by counsel for plaintiff in error.

Record, p. 46.

III.

We further desire to call attention of the court to the claims of plaintiff in error of the delay in enforcing this claim. In 1885 the supreme court of Minnesota, *In re* Jefferson, 35 Minn., page 215, *supra*, held that claims for taxes could be enforced in probate proceedings. The county of Washington then had its choice, after levying the taxes, which was done every year, to attempt collection under the statute by attachment and publication or to wait until Sophia M. Bristol should be within the State, so that personal service could be had against her, or to wait the opportunity of collecting it in probate proceedings, as any individual might do.

Sophia M. Bristol inherited the estate while the Jefferson suit was pending, and was the owner of the property when the decision was rendered in that case, and every year but one her agents were notified and requested to list this property for taxation, and they, too, were agents during the time of the former litigation. So, if it were even the subject of equitable consideration, which it is not, the plaintiff in error would not be in position to urge delay on the part of the county. Sophia M. Bristol continued to carry on the loan business after the decision *In re* Jefferson in the same manner as before, and was legally bound to know each year that the property was subject to taxation and was being taxed.

Respectfully submitted.

GEO. H. SULLIVAN,
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No. 109.
Reply Br. of Clapp & Sullivan for D. E.

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OCTOBER TERM, 1899.

No. 109.

JAMES BRISTOL, Executor, &c., Plaintiff in Error,

vs.

WASHINGTON COUNTY, MINNESOTA.

REPLY BRIEF FOR THE DEFENDANT IN ERROR.

Moses E. Clapp,
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Judd & Detweiler, Printers, Washington, D. C. 2-4-1900

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 109.

JAMES BRISTOL, AS EXECUTOR, PLAINTIFF IN ERROR,

vs.

WASHINGTON COUNTY, DEFENDANT IN ERROR.

REPLY BRIEF FOR DEFENDANT IN ERROR.

Answering the points made in the reply brief of plaintiff in error, we suggest:

1. The judgment in this proceeding is not a personal judgment, either in form or effect. It is simply an allowance of the claim for taxes against the estate of Sophia M. Bristol and only binds the assets of such estate within the jurisdiction of the probate court of Ramsey county, Minnesota, and does not bind the estate elsewhere, nor the heirs, devisees, or executors in New York.

Johnson *vs.* Powers, 139 U. S., 156.
Stacy *vs.* Thrasher, 6 How., U. S., 44.

2. The substantial effect of the allowance of the claim for taxes in this case is to subject the property of the estate of Sophia M. Bristol within the jurisdiction of the probate court of Ramsey county to the payment of such claim in much the same manner as if the claim were enforced as a lien in a direct proceeding for that purpose. In effect the claim becomes a lien on the property of the estate and in the nature of things cannot be a personal judgment against any person.

That personal-property taxes in Minnesota are a lien upon all the property of the owner within Minnesota was directly determined by the United States circuit court of appeals in the case of State of Minnesota *vs.* Central Trust Co., 94 Fed., 244.

In this case the question of the power of a State to provide that personal-property taxes should be a personal claim against the owner is not necessarily involved. Our supreme court has held *In re* Jefferson, 35 Minn., 215, that such claims could be proved and allowed against the estate of deceased persons; but to hold that a State has not such power might, and we think inevitably would, tend to seriously hinder and embarrass the State in the collection of its revenue, and would open the door for evasion and fraud. Property may be and is owned and business conducted by one person in many different States, and is subject to be and is changed in form, removed, sold, consumed, and sometimes destroyed. When subject to taxation and taxed, of what avail is the power of taxation if the State has no power to enforce the tax by such remedies as will make the collection reasonably safe and certain? Shall the State be limited in remedies for collecting taxes, except in the requirement that due process of law be observed? We think no other limit has ever been placed upon the powers of a State in this respect.

So the form of action or proceeding by which the State enforces the tax is not important. The State may provide for an action on the case for defeating a tax lien or an action

to enforce a lien against property or by filing its claim against an estate, so long as due process of law is observed in the proceeding; and it is entirely within the province of the State to determine the form and scope of all remedies for the collection of taxes as well as in other actions or proceedings. Plaintiff in error apparently concedes the right of the State to hold the owner personally liable where property taxed is fraudulently or unlawfully withdrawn from the State to the value of the taxed property, so that the question is resolved to a mere question of form of remedy or proceeding over which the State has full power.

Plaintiff in error cites the case of a non-resident selling personal property *subject* to taxes, and propounds the question: "Does he remain subject to personal suit for the taxes?" By way of answer we suggest it is hardly competent for persons to shift their obligations for taxes already assessed by means of contracts with other persons so as to affect the rights or remedies of the State.

3. That the laws of Minnesota provide for the taxation of the property in question there can be no dispute, and whether designated as credits or otherwise is not material.

In re Jefferson, 35 Minn., 215.

In substance the tax laws of Minnesota and of Louisiana relating to this kind of property are the same, so that since the decision in New Orleans *vs.* Stempel, 175 U. S., 309, the only question remaining in the case at bar is: Did the mere removal of the notes from Stillwater to New York for temporary purposes (they being returned from time to time), under the circumstances set forth in the statement of facts, defeat the right of the State to tax the property, the credits evidenced by the notes? Was it competent for the owner of this property clearly subject to taxation to defeat the tax by a mere temporary removal of the notes? From the history of the property and business, from the tax litigation

then pending, from the fact that no excuse or reason appears for the removel of the notes, from the fact that the business continued in all other respects as before; that the notes were made and made payable at Stillwater, and returned there from time to time on call of the agents whenever required for any purpose, it is evident that the removal of the notes was only an attempt to evade taxation. This is a fair inference from the record.

The effect of the introduction in evidence in this case of the tax-lists mentioned in the stipulation of facts (Record, pp. 47, 48) was *prima facie* to establish the validity of the taxes sought to be recovered under the rule of evidence announced.

In re Jefferson, 35 Minn., 215.

4. Thereupon the burden was cast upon plaintiff in error to establish clearly that the property was not subject to taxation, and we think this requires him to satisfy the court that the removal of the notes in the manner and under the circumstances shown was not to evade taxation, but for some *bona fide* purpose and to satisfy the court that all the facts exist which he claims should exempt the property from taxation.

5. It was undoubtedly competent for the State to have provided that taxes of the character in question should be a lien upon the property and to have provided other and, perhaps, more adequate remedies than already provided, but that it has not done so is not material to this argument; neither is it any measure or indication of the limit of the power of the State in respect to providing such remedies.

6. Where the owner of property entrusts it to an agent, with direction to invest it in business in another State, with full power and authority to control such property and invest, collect, and reinvest it at discretion, the principal

being liable for all the acts and contracts of the agent within the scope of the business authorized as much as if there personally acting for himself instead of through another, why should he not also be liable to the State for the just taxes levied by the State in respect to the property? By his own voluntary act an owner of intangible property may himself, by a long-continued course of business, by permanently attaching the property to the person of his agent, by requiring it to be paid in another State to his agent, by clothing his agent with all the power he himself has over the property, give it a home, a situs, apart from his own domicile. Washington county was certainly the business situs, and why not also the situs of this property for the purpose of taxation?

MOSES E. CLAPP,
GEORGE H. SULLIVAN,
Counsel for Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

No. 109, OCTOBER TERM, 1899.

JAMES BRISTOL, Executor of the Last Will and Testament of Sophia M. Bristol, Deceased,

Plaintiff in Error.

vs.

WASHINGTON COUNTY, STATE OF MINNESOTA,

Defendant in Error.

To the Honorable Supreme Court of the United States:

The undersigned respectfully make the following suggestion and petition for a limited rehearing for the purpose of correcting what we think is an inadvertent error in the order and judgment of this Court in the above entitled cause in that the Court directed lower Court to exclude the taxes for the years 1883 to 1888 inclusive.

While we feel that under the view taken of the case by your Honorable Court, the exclusion should have been only for the years 1883 to 1887 inclusive, and that defendant in error should have judgment for the taxes for the year 1888.

Our suggestion and petition is based upon the statutes of the State of Minnesota. Under the statutes of Minnesota as they existed during the years in question, no answer was allowed to the warrant of distraint nor could that warrant be construed in any manner as the beginning of an action.

We quote the section in question, Section 1567:

"All unpaid personal property taxes shall be deemed delinquent on the 1st day of March, next after they become due * * * On the 1st day of April in each and every year, the County Treasurer shall make a list of all such delinquent personal property taxes which he shall certify to the Clerk of the District Court, and the said Clerk shall immediately issue his warrants to the Sheriff of the County, directing him to proceed to collect the same, and if such taxes are not paid upon demand, said Sheriff shall *distrain* sufficient goods and chattels belonging to the person charged with such taxes, if found within the County."

Section 1568 we do not think necessary to quote at length as there will be no contention; it simply provides for the return of the warrants before the 1st day of June with a list of the uncollected taxes, and the delivery of the list of returned warrants to the Board of County Commissioners at their first session, and their revision of such list as to what in their judgment is collectable. Now, it will be noticed that under Section 1567 the County Treasurer makes the list and certifies the same to the Clerk, who shall immediately issue his warrants and the Sheriff must collect or return the warrants on or before the 1st day of June.

During the years covered by these proceedings the County Board met under statutory provisions on the first Tuesday after the first Monday of January, and the second Monday of July, (Section 667). We hardly think it necessary to quote this section at length as there can be no contention concerning it.

The first meeting of the Board therefore after the return of the uncollected distraint warrants would be on the second Monday of July. Now, Section 1569 provides:

"Within ten days after the adjournment of the Board of Commissioners the Auditor shall file a copy of such revised list with the Clerk of the District Court, and within ten days after the filing of such copy, the Clerk shall issue and deliver to the Sheriff of the County where the person against whom such tax is claimed may at the time reside or be, for service, a citation to each delinquent named on the list, stating the amount of tax and penalty, and requiring such delinquent to appear on the

first day of the *next general term of the District Court* to be held at a time not less than thirty days after the issuance of such citation, and show cause if any there be, why he should not pay such tax and penalty; and if he fails to pay said tax, penalty and cost to the Sheriff before the 1st day of the term, or on said day, to show cause as aforesaid, the Court may direct the Clerk to enter a judgment against such delinquent for the amount of such tax, penalty and cost."

Then the statute enumerates what shall, and what shall not be a defence to the citation and under what circumstances a new citation may be issued.

Section 1570, after providing for the Clerk's fee, provides:

"Execution shall be issued upon such judgment at the request of the County Attorney, and shall state that the judgment was obtained for delinquent personal property taxes and no property shall be exempt from seizure thereon, and such execution may be renewed and re-issued in the same manner as now provided by law upon executions in judgments in civil actions, and all such fees, costs shall be rendered, taxed and made a part of the judgment."

We think it goes without saying that it is the citation issued under Section 1569 which must be issued subsequent to the first Tuesday in July, which is the commencement of the action provided by law for the enforcement of the tax and that no statute of limitations could run prior to that time.

Now, it will be seen that as to the tax of '88, no suit could be commenced until after the 1st day of July, 1889, and the claim was filed in Probate Court on the 18th day of April, 1895, (See printed transcript pg. 23) which would leave less than six years from the time the right of action accrued until the claim was filed, and we think it is only necessary to call the Court's attention to satisfy them that the tax of 1888 is not out-lawed by the Statute of limitations, and should be included in the judgment for the defendant in error.

More than that, Section 5148 of the Statnte of Minnesota reads as follows:

" * * * If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an

action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration."

Now Sophia M. Bristol died on the 11th day of August, 1894, (Pg. 23 printed record) and letters testamentary were issued in Ramsey County, Minnesota, October 19th, 1894, (Pg. 14 printed record) which would take all proceedings against the estate for one year from date out of the statute of limitations, so that in any event, the tax for the year 1888 would not be defeated by the statute of limitations.

We respectfully submit that the order and judgment of this Court should be so amended as to include the tax for the year 1888 in the judgment awarded the defendant in error.

Moses E. Clapp &
George H. Sullivan
Counsel for deft. in error.

We hereby certify that the foregoing petition is in our opinion well founded and not made for the purpose of delay.

Moses E. Clapp
George H. Sullivan

BRISTOL *v.* WASHINGTON COUNTY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

No. 109. Argued January 22, 1900. — Decided April 9, 1900.

The personal property of a citizen of and resident in one State, invested in bonds and mortgages in another State, is subject to taxation in the latter State; and the amount of the tax is a claim against the property of the person taxed which is a debt that may, in case of death of the person taxed, be proved against his estate in the State where the mortgages and loans are contracted subject to the statutes of limitations of the State.

THIS is an appeal from a judgment of the Circuit Court for the District of Minnesota, allowing a claim in favor of Washington County, Minnesota, against the estate of Sophia M. Bristol, deceased.

Sophia M. Bristol died testate, naming James Bristol as her executor, and her will was duly admitted to probate in Wyoming County, State of New York, where said James and Sophia M. resided. Thereafter Mr. Bristol applied to the Probate Court of the County of Ramsay, State of Minnesota, for the admission of the will to probate there and the issue of letters testamentary to him. This was done, and subsequently the County of Washington exhibited its claim against said estate, whereupon Bristol filed his petition in the Probate Court for the removal of the action instituted by the filing of the claim into the Circuit Court of the United States, and it was removed accordingly. A repleader was awarded by stipulation, and a formal complaint and answer filed. The matter was heard by the Circuit Court, a jury being waived according to law, and the court made the following findings:

"I. That Cyrus Jefferson was the father of said Sophia M. Bristol, deceased, and died in November, 1883. For fourteen years just prior to his death he was a citizen and resident of the State of New York, and during said time loaned and in-

vested large sums of money to various persons residing in Minnesota, upon their notes, payable to his order at said Stillwater, secured by mortgages on real estate in said Washington and adjoining counties in the State of Minnesota; all said loans and investments were made and the notes and mortgages taken by and through William M. McCluer, the agent of said Cyrus Jefferson, who resided at the city of Stillwater, in said Washington County, during all the time hereinafter mentioned, and who, with full authority from said Cyrus Jefferson, made all such loans and took and retained all notes and securities and collected and reloaned both the principal and interest of said loans at said city of Stillwater, in Washington County, Minnesota, and kept the same permanently invested in that way, as nearly as practicable, save as to such moneys as said Jefferson drew from time to time to pay his debts and living expenses.

"II. Prior to May 1, 1883, said William M. McCluer, at said Stillwater, by the direction of said Jefferson, but otherwise with the same power and under the same authority and in the same manner, loaned of said moneys of said Cyrus Jefferson to persons in Washington County sums aggregating eighteen thousand dollars ($18,000), taking notes and mortgages therefor in the name of and payable to said Sophia M. Bristol at said Stillwater, and retained the same as her agent, and handled and collected and reinvested the same in the same manner as he had those of Cyrus Jefferson.

"III. After the death of said Cyrus Jefferson and on December 18, 1883, all the other notes and mortgages held by said McCluer as agent for said Cyrus Jefferson were transferred, assigned, and passed to said Sophia M. Bristol as her share of the estate of her said father. She thereupon employed said William M. McCluer and Charles M. McCluer, both of whom then at all times herein mentioned resided at said Stillwater, as her agents at said city of Stillwater in and about said loaning business. She gave to them all the authority before that time exercised by said William M. McCluer for her father, Cyrus Jefferson, as aforesaid, and also gave to them a written power of attorney empowering them or either of them

to satisfy and discharge or to sell and assign any and all mortgages then or thereafter in her name in the States of Minnesota or Wisconsin; all of said notes and mortgages of said Sophia M. Bristol, including those received by her as her share of her father's estate, as well as those taken in her name by said William M. McCluer prior to the death of her father, as aforesaid, were still left by her in the hands of her agents in Stillwater, Minnesota, and said agents continued as before to make collections of both principal and interest due on said notes and mortgages, to satisfy and discharge mortgages, and to make new loans and investments upon like securities with the moneys so collected by them for said Sophia M. Bristol, and kept all of her moneys received or collected by them prior to transmittal or reinvestment of the same, and while in their hands, deposited in bank in said Stillwater as their money, and having all notes and mortgages received by them for such loans made payable at their own office in said city of Stillwater, said mortgages being upon lands in Washington and adjoining counties in Minnesota.

"IV. In March, 1885, all of such notes then in the hands of said agents were delivered to said Sophia M. Bristol, and thereafter all new notes as taken by said agents in said business were sent to Sophia M. Bristol and kept by her at her home in New York, but were payable as before at the office of said agents in Stillwater, Minnesota; all mortgages securing such notes were retained by said agents, and said notes were returned to said agents at Stillwater by said Sophia M. Bristol from time to time whenever required by them for the purpose of renewal, payment, collection, or foreclosure of securities; that the said William M. McCluer and Charles M. McCluer continued as agents for said Sophia M. Bristol, collecting money becoming due upon said notes and making loans in her name, sometimes under the direction of James Bristol, her husband, but generally upon their own judgment; that they remitted money to Sophia M. Bristol when she called for the same, and what was not received by her was invested in new loans, as aforesaid.

"That said Sophia M. Bristol did receive from the proceeds

of said collections at various times large sums of money through said agents, and all moneys collected were always subject to be sent to her or paid out in any way she should order.

"V. In the month of August, 1890, said William M. McCluer died, and thereafter said Charles M. McCluer continued to act as sole agent for said Sophia M. Bristol at said city of Stillwater, Minnesota, with the same power as before exercised by him and said William M. McCluer, except that in November, 1890, Sophia M. Bristol revoked said power of attorney which authorized said agent to satisfy mortgages of record, and thereafter executed satisfactions of mortgages herself.

"VI. Said loaning business was so carried on by said Sophia M. Bristol by and through her said agents at the city of Stillwater, Minnesota, in the manner aforesaid until her death, in the month of August, 1894.

"VII. Said Sophia M. Bristol had no taxable property in said Washington County during any of the years hereinbefore or hereinafter mentioned other than the loans and indebtedness mentioned, which were secured by mortgages upon lands in Minnesota, and which were under the charge and management of her said agents, who, during all said years and during all the time within which the taxes hereinafter mentioned were assessed and levied, resided and had their office and transacted said loaning business at the said city of Stillwater, in said county and State.

"VIII. That the moneys originally sent by said Jefferson to said William M. McCluer and invested and reinvested by said McCluer, and afterwards by said Sophia M. Bristol kept and retained in the hands of said William M. McCluer and Charles M. McCluer as her agents, were so sent, retained and kept in the hands of said agents in the city of Stillwater, Washington County, Minnesota, in and during each of the years when the taxes hereinafter mentioned were assessed and levied against said Sophia M. Bristol, as hereinafter specifically set forth, as and for a permanent investment and business under the full control of said agents, and said property and said loans acquired and had a situs in said city of Stillwater, Washington County, Minnesota, for the purpose of taxation.

"IX. That the claimant herein, Washington County, is and for more than thirty years last past has been a municipal corporation, to wit, an organized county created and existing under and pursuant to the laws of the State of Minnesota.

"X. That in and during each of the years from 1883 to 1894, inclusive, certain personal property taxes were duly assessed and levied against said Sophia M. Bristol by the proper taxing officers of said city of Stillwater and said Washington County on the personal property of said Sophia M. Bristol, deceased, consisting of the 'credits other than that of bank, banker, broker or stock jobber,' and that said assessments were each in fact based upon credits due said Sophia M. Bristol on promissory notes of various persons residing in Washington County and other counties in Minnesota, payable to her order, secured by mortgages on real estate situate in Washington County and other counties in the State of Minnesota.

"Said notes were all made payable at the office of William M. McCluer or Charles M. McCluer, at the city of Stillwater. The assessed valuation of said personal property upon which said taxes were so assessed and levied for each of said years, the rate of the tax assessed upon property in the said city of Stillwater, in said county, that being the district where said property was assessed, in the number of mills levied on each dollar of property at the assessed valuation for each of said years, and the amount of said taxes so assessed and levied against said Sophia M. Bristol, deceased, for each of said years, are as set forth in the following schedule thereof, to wit: [Here followed schedule as described. The valuations ran from $17,900 in 1883 to $184,900 in 1884; $196,672 in 1888; $181,292 in 1889, and $179,900 in 1890, 1, 2, 3 and 4.]

"That the said Sophia M. Bristol failed and neglected to pay said taxes on the first day of March in each of the years following that in which said taxes were respectively levied, as hereinbefore set forth, or at any time thereafter, and that by reason of such failure said Sophia M. Bristol became and was and is liable to pay a penalty amounting to five per cent. on the amount of said taxes for the years 1883 to 1894, and ten per cent. on the amount of said taxes for each year thereafter, and that the

amount of said penalty for each of said years is as follows — that is to say: [Here the penalties claimed for each year were set forth.]

"XI. Said Sophia M. Bristol never resided in Washington County nor in the State of Minnesota at any time, nor was she within the State of Minnesota from March 1, 1883, until her death, in August, 1894, except temporarily, and that the whole period of time she spent in the State of Minnesota from March 1, 1883, until her death did not exceed one year.

"XII. On or about the nineteenth day of October, 1894, the will of said Sophia M. Bristol was duly admitted to probate in and by the probate court of Ramsey County, in the State of Minnesota, and such proceedings were had in the matter of said estate that James Bristol, the executor named in said will, was duly appointed by said court as the executor of said last will and testament and of said estate, and the said James Bristol thereupon duly qualified as such executor and entered upon the discharge of his duties as such, and thereafter and on the eighteenth day of April, 1895, and within the time required by the order duly made by said probate court for filing claims against the estate of said Sophia M. Bristol, deceased, said claimant, Washington County, duly made and filed its verified claim in due form for all of the said taxes and the said penalties, together with interest upon the amount of said taxes and penalties for each year from and after the first day of March, in the year after the year in which said taxes were levied, as aforesaid.

"XIII. That the said Sophia M. Bristol was and for more than fifteen years next prior to her death has been a resident and citizen of the State of New York, and said James Bristol, the executor above named, is now and for more than fifteen years last past always has been a resident and citizen of the State of New York.

"XIV. The court further finds that all of the taxes hereinbefore mentioned were fairly and equally assessed on a fair valuation of the personal property of said Sophia M. Bristol, deceased, for each of the years hereinbefore mentioned, and that no part of said taxes has ever been paid."

As conclusions of law the court found that Washington County

was entitled to judgment for the amount of the taxes and penalties, together with costs and disbursements, and that "said claim of said amount is a just and valid claim against the estate of Sophia M. Bristol, deceased," and entered judgment as follows: "It is therefore considered, ordered and adjudged — That the County of Washington, the claimant in this case, do have and recover of and from the estate of Sophia M. Bristol, deceased, the sum of sixty-four thousand six hundred eighty-four dollars and seventy-eight cents ($64,684.78), so found to be due by the court, and that said sum of sixty-four thousand six hundred eighty-four dollars and seventy-eight cents ($64,684.78) is a just and valid claim against the estate of Sophia M. Bristol, deceased, in favor of said Washington County, besides the costs and disbursements herein to be taxed."

Mr. C. W. Bunn and *Mr. Emerson Hadley* for plaintiff in error.

Mr. Moses E. Clapp and *Mr. George H. Sullivan* for defendant in error. *Mr. N. H. Clapp* and *Mr. L. L. Manwaring* were on their brief.

Mr. Chief Justice Fuller, after stating the case, delivered the opinion of the court.

The judgment amounted in effect to the allowance of the claim payable in due course of administration out of assets of the estate within the jurisdiction of the probate court. This was so notwithstanding the domicil of the testatrix and of her executor was in the State of New York; that that was the place of principal administration; and that the person charged therewith was the same. *Aspden* v. *Nixon*, 4 How. 467; *Johnson* v. *Powers*, 139 U. S. 156, 159.

Our jurisdiction by direct appeal is invoked on the ground that the application of the Constitution of the United States was involved, and that a law of the State was "claimed to be in contravention of the Constitution of the United States."

The objections of the executor to the allowance of the claim

and his answer put forward the deprivation of property without due process of law; the abridgment of privileges and immunities of citizens of the United States; and the denial of the equal protection of the laws, as the violations of constitutional safeguards relied on. Of these the first only is pressed upon our attention and needs to be considered, and that raises the question whether the laws of the State of Minnesota, as expounded by the Supreme Court of that State, in authorizing this judgment, amounted to the taking of property without due process of law.

In the course of the administration of the estate of Cyrus Jefferson, deceased, in the probate court of the County of Washington, Minnesota, a claim was presented in March, 1884, against the estate for unpaid taxes for the years 1882 and 1883, on credits secured by mortgages, amounting to about $122,000, and the claim was allowed. The executors appealed to the district court where the order of the probate court was affirmed. The case was then carried by the executors to the Supreme Court of Minnesota, which, on May 26, 1886, affirmed the judgment. *In re Jefferson*, 35 Minnesota, 215. It was objected "that taxes are not debts which can be proved against the estate of deceased persons;" but the court overruled the objection, saying: "It is not material whether a personal tax is a debt, in the sense that an action against the person may be maintained to recover it. It is at least a claim against the property which survives the death of the person against whom it is levied, and remains a claim against his estate. The statute regards it as a debt to be paid out of the estate. In prescribing the order of preference in which debts shall be paid, where the estate is not sufficient to pay all, it provides (Gen. St., 1878, c. 53, § 38) that, after paying the necessary expenses of the funeral, last sickness and administration, the executor or administrator shall 'pay the debts against the estate in the following order. . . . *Second*, public rates and taxes.' This, we think, is conclusive that, for the purpose of proof and payment out of the estate, a personal tax is a debt." The court further held that a tax list or tax duplicate, duly certified by the county auditor, as required by statute, was *prima facie* evidence of the

due levy of the taxes in it. The main question in the case was whether credits due to a resident of another State, from residents within Minnesota, for moneys loaned and invested by, and which credits were managed and controlled by, an agent of the creditor, resident within Minnesota, could be taxed in Minnesota under existing statutes, and the court held that they could. The court, after referring to the provisions of the statute that all personal property in the State was subject to taxation, and that all moneys and credits should be listed by the owner or his agent, where one or the other resided, said: "It is to be taken, therefore, as the intent of the statute, that credits, to whomsoever owing, are taxable here if they can be regarded as personal property *in this State;* that is, situated in this State. To justify the imposition of tax by any State, it must have jurisdiction over the person taxed, or over the property taxed. As Jefferson was not a resident of this State, there was no jurisdiction over him. But if the property on account of which these taxes were unpaid was within this State, the State had jurisdiction to impose them as it might impose a tax upon tangible personal property permanently situated here, and to enforce the taxes against the property. The authorities which we cite in support of the proposition that the credits taxed had a *situs* here, fully sustain this.

"For many purposes the domicil of the owner is deemed the *situs* of his personal property. This, however, is only a fiction, from motives of convenience, and is not of universal application, but yields to the actual *situs* of the property when justice requires that it should. It is not allowed to be controlling in matters of taxation. Thus, corporeal personal property is conceded to be taxable at the place where it is actually situated. A credit, which cannot be regarded as situated in a place merely because the debtor resides there, must usually be considered as having its *situs* where it is owned,—at the domicil of the creditor. The creditor, however, may give it a business *situs* elsewhere; as where he places it in the hands of an agent for collection or renewal, with a view to reloaning the money and keeping it invested as a permanent business." After citing *Catlin* v. *Hall*, 21 Vermont, 152; *People* v. *Smith*, 88 N. Y. 576; *Wilcox* v.

Ellis, 14 Kansas, 588; *Board of Supervisors* v. *Davenport*, 40 Illinois, 197, and many other cases, the opinion continued thus: "The obligation to pay taxes on property for the support of the government arises from the fact that it is under the protection of the government. Now, here was property within this State, not for a mere temporary purpose, but as permanently as though the owner resided here. It was employed here as a business by one who exercised over it the same control and management as over his own property, except that he did it in the name of an absent principal. It was exclusively under the protection of the laws of this State. It had to rely on those laws for the force and validity of the contracts on the loans, and the preservation and enforcement of the securities. The laws of New York never operated on it. If credits can ever have an actual *situs* other than the domicil of the owner, can ever be regarded as property within any other State, and as under obligation to contribute to its support in consideration of being under its protection, it must be so in this case."

It was thus ruled that the tax list of personal property was *prima facie* evidence of the due levy of the taxes; that such taxes could be proven against decedents' estates; and that credits secured by mortgages, the result of the business of investing and reinvesting moneys in the State, were subject to taxation as having their *situs* there.

Admonished as to the law of the State in these particulars, Mrs. Bristol, Mr. Jefferson's daughter, continued the business of investing and reinvesting in the same way and through the same agency until her own death in August, 1894. The state statute required every person being a resident of the State to list his personal property, including moneys, credits, etc., for taxation and "moneys and other personal property invested, loaned or otherwise controlled by him as the agent or attorney or on account of any other person or persons;" and in cases of failure to obtain a statement of personal property from any cause, it was made the duty of the assessor to ascertain its amount and value and assess the same at such amount as he believed to be the true value thereof. Stat. 1894, c. 11, §§ 1515, 1546; Stat. 1878, c. 11, §§ 7, 38. No question arises here in respect of the

regular listing of these investments for taxation from 1883 until and including 1894, nor in respect of the valuation thereof.

Mrs. Bristol had invested some $18,000 of her own money, belonging to her prior to her father's death, in the same way and by the same agency, and invested and reinvested in the same manner that money and moneys derived from notes and mortgages held by the agent for Mr. Jefferson, which passed to her on his death. And these investments were taxable and were taxed year by year during all this period according to the statutes of the State and the decision of the Supreme Court from which we have quoted.

It is insisted, however, that this is not so, because in 1885, which was after the presentation of the claim against the father's estate in the probate court, though before the decision by the Supreme Court, the notes then in the hands of the agents were delivered to Mrs. Bristol, and thereafter all new notes taken in the business were sent to her and kept by her in her home in New York. But these notes were payable as before at the office of the agents in Minnesota; the mortgages securing the notes were retained by the agents, and the notes were returned to the agents from time to time, whenever required by them, for the purpose of renewal, collection or foreclosure of securities; the agents continued to collect the money due on the notes, and to make loans in the name of Mrs. Bristol, sometimes under her husband's direction, but generally on their own judgment; and they remitted money to Mrs. Bristol whenever she called for the same, while what was not received by her was invested in new loans. It also appeared that Mrs. Bristol had given the agents a power of attorney empowering them to satisfy or discharge, or to sell and assign, any and all mortgages in her name in the States of Minnesota and Wisconsin, but that she revoked this instrument after the death of one of the agents, and about November, 1890, thereafter executing satisfactions of mortgages herself.

Nevertheless the business of loaning money through the agency in Minnesota was continued during all these years just as it had been carried on before, and we agree with the Circuit Court that the fact that the notes were sent to Mrs. Bristol in New

York, and the fact of the revocation of the power of attorney, did not exempt these investments from taxation under the statutes as expounded in the decision to which we have referred. And we are unable to perceive that any rights secured by the Federal Constitution were infringed by the statutes as thus interpreted so far as the *situs* of these loans and mortgages was concerned.

In *New Orleans* v. *Stempel*, 175 U. S. 309, certain taxes were levied on money on deposit, and also on money loaned on interest, credits and bills receivable, and it was held by this court that the statutes of Louisiana, as interpreted by the courts of that State, in authorizing such assessment, did not violate the Constitution of the United States. There the money, notes and evidences of credits were in fact in Louisiana, though their owners resided elsewhere. Still under the circumstances of the case before us, we think, as we have said, that the mere sending of the notes to New York and the revocation of the power of attorney did not take these investments out of the rule.

Persons are not permitted to avail themselves for their own benefit of the laws of a State in the conduct of business within its limits, and then to escape their due contribution to the public needs through action of this sort, whether taken for convenience or by design.

In *New Orleans* v. *Stempel* it was remarked: "With reference to the decisions of this court it may be said that there has never been any denial of the power of a State to tax securities situated as these are, while there have been frequent recognitions of its power to separate for purposes of taxation the *situs* of personal property from the domicil of the owner. . . . In *Tappan* v. *Merchants' National Bank*, 19 Wall. 490, the ruling was that although shares of stock in national banks were in a certain sense intangible and incorporeal personal property, the law might separate them from the persons of their owners for purposes of taxation, and give them a *situs* of their own. See also *Pullman's Car Company* v. *Pennsylvania*, 141 U. S. 18, 22, where the question of the separation of personal property from the person of the owner for purposes of taxation was discussed at length. As also the case of *Savings Society* v. *Multnomah*

County, 169 U. S. 421, 427, in which a statute of Oregon taxing the interest of a mortgagee in real estate was adjudged valid, although the owner of the mortgage was a non-resident." In the latter case the subject was much considered, and Mr. Justice Gray, delivering the opinion of the court, said: "The authority of every State to tax all property, real and personal, within its jurisdiction, is unquestionable. *McCulloch* v. *Maryland*, 4 Wheat. 316, 429. Personal property, as this court has declared again and again, may be taxed, either at the domicil of its owner, or at the place where the property is situated, even if the owner is neither a citizen nor a resident of the State which imposes the tax. *Tappan* v. *Merchants' Bank*, 19 Wall. 490, 499; *State Railroad Tax Cases*, 92 U. S. 575, 607; *Coe* v. *Errol*, 116 U. S. 517, 524; *Pullman's Car Co.* v. *Pennsylvania*, 141 U. S. 18, 22, 27."

Accepting the views of the state court in relation to the state statutes and proceedings thereunder, and concluding that the Constitution of the United States did not operate to prohibit the exercise of the power to tax these investments, it follows that the Circuit Court did not err in sustaining the validity of the taxation. But it is further contended that, as Mrs. Bristol was a non-resident, the power to tax could be exercised only as against the very property taxed; that these assessments did not constitute judgments *in personam;* and that judgment against her estate could not, therefore, be rendered upon them. The state statute provided that claims for taxes should be preferred to ordinary debts, (Stat. 1894, c. 45, § 4529,) and, as has been seen, the Supreme Court has decided that, "for the purpose of proof and payment out of the estate, a personal tax is a debt." The court, for that purpose, so treated taxes, but not as being debts in the usual acceptation of the term. The obligation to contribute to the support of government in return for the protection and advantages afforded by government is not dependent on contract, but on the exercise of the public will as demanded by the public welfare.

By the laws of Minnesota, moneys, credits and other personal property were required to be listed, either by the owner or his agent; provisions were made for notice; for action by the as-

sessor in case of failure to list; for a board of review, meeting at a specified time; for the delivery of lists (in tax books) to the county treasurers, who were duly authorized to receive and collect the taxes named therein; that personal property taxes unpaid on the 1st of March next after they became due should be deemed delinquent; for the filing of delinquent lists in the appropriate office; for issue of warrant; for the distraint of goods and chattels; for personal judgment on service of citation; and for proceeding against non-residents by attachment and publication of notice. (Gen. Stat. 1894, c. 11; Gen. Stat. 1878, c. 11.)

By section 1623, Gen. Stat. 1894, (Gen. Stat. 1878, c. 11, § 105,) it was provided that: "The taxes assessed upon personal property shall be a lien upon the personal property of the person assessed from and after the time the tax books are received by the county treasurer."

Thus it appears that on the return of the delinquent tax list, the amount of the tax could be collected by distraint of goods and chattels, or by proceedings by attachment and publication, judgment in which would operate on the property taken in attachment, by garnishment or otherwise. There was no want of due process in all this, for while the non-resident came under the obligation to pay, appropriate notice and opportunity to contest were afforded. And if a personal action were brought and service obtained, the defendant would not be cut off from any competent defence, as the delinquent list would not necessarily be held conclusive. In this case no defence on the merits appears to have been relied on except the want of *situs*.

Dewey v. *Des Moines*, 173 U. S. 193, cited by plaintiff in error, is not to the contrary. What was ruled there was that a citizen of one State cannot be cast in a personal judgment in another State on an assessment levied there on real estate for a local improvement, without service on him, or voluntary appearance, or some action on his part amounting to consent to the jurisdiction.

This brings us to consider the plea of the statute of limitations interposed as to the taxes for the years 1883 to 1888 inclusive.

Mrs. Bristol died in August, 1894; the will was admitted to

probate by the probate court of Ramsay County, October 19, 1894; Washington County filed its claim for taxes in that court April 18, 1895; the statute of limitations provided that actions "upon a liability created by statute" should be barred by the lapse of six years. Stat. 1894, c. 66, § 5136. This statute applied to actions brought in the name of or for the benefit of the State. § 5142. The right to proceed to enforce these taxes commenced the first of April of the year following that for which they were levied. If this had been a personal action brought against Mrs. Bristol in her lifetime, the plea of the statute was open to be defeated by the fact of her non-residence, (§ 5145,) but treating the filing of the delinquent lists as proceedings *in rem*, it is contended that the statute applied.

In *County of Redwood* v. *Winona & St. Peter Land Co.*, 40 Minnesota, 512, the statute of limitations of six years was held to apply to proceedings to enforce the collection of taxes against real estate, and to the same effect are *Mower County* v. *Crane*, 51 Minnesota, 201; *Pine County* v. *Lambert*, 57 Minnesota, 203; *State* v. *Norton*, 59 Minnesota, 424. In the first cited case it appeared that certain lands having been taxed, were in 1883 assessed and a tax levied for each year for fifteen years prior to that time. On an application for judgment against the land it was objected that the statute of limitations had run as to all taxes where the application for judgment could have been made six years or more prior to the time it was made, if the land had been taxed at the time it should have been taxed under the statute, and the court sustained the objection. It was held that by statute in Minnesota, the statute of limitations ran against the State the same as against an individual; that a tax was a liability created by statute; that although statutes of limitation may in terms be applicable only to actions, they are to be construed liberally and applied to all proceedings that are analogous in their nature to actions "so as to make the right sought to be enforced, and not a form of procedure, the test as to whether or not the statute applies. Upon this principle they are held to apply to all claims which may be the subject of actions, however presented; also that they furnish a rule for cases analogous in their subject matter, but for which a remedy unknown to the

common law has been provided. They have also been applied by analogy to proceedings in admiralty, to claims in bankruptcy, or in probate court, although not within the strict letter of the statute. . . . A tax being a liability created by statute, and the filing of the delinquent list being, as the statute declares, and as we have held, the institution of an action against the land for the recovery of the tax appearing against it in the list; and, inasmuch as the nature of the right sought to be enforced, and not the mode of procedure, is the test,— we are unable to see why it should make any difference whether the action is *in rem* or *in personam*,— against the property instead of against its owner. We have therefore come to the conclusion that these proceedings are, within the meaning of the statute, 'an action upon a liability created by statute,' and are barred as to all taxes for the enforcement of which such proceedings might have been instituted more than six years before the commencement of the present proceedings, had such taxes been assessed in the proper year."

The estate of Mrs. Bristol is liable to respond to this claim because these taxes were lawfully levied in respect of her property situated in Minnesota when the levies were made; and the statute gave a lien for them against all her personal property within the jurisdiction. Collection could have been enforced by distraint, or by attachment, and in either case could only have been made out of the property sequestered. In the pending proceeding then which seeks to subject assets of the estate within the jurisdiction to payment of the claim it seems to us the ruling of the Supreme Court is applicable. In other words, the filing of the delinquent lists had reference to property, and a personal judgment could not have been taken thereon without service of citation.

Hence in a subsequent proceeding to enforce collection from property of the decedent, the rule which was applied to proceedings to obtain judgment against real estate would appear to be applicable in principle. If the county of Redwood had lost its right to enforce the assessments, (supposing they had been made when they should have been,) by lapse of time, the county

of Washington may well be held subject to a similar deprivation in respect of the allowance of a portion of its claim.

Reversed, and the cause remanded with direction to exclude the taxes for the years 1883 *to* 1888, *inclusive, and to render judgment for the taxes and penalties after the latter year, with interest on the aggregate sum thereof from June* 29, 1898, *the date of the judgment below.*

MR. JUSTICE WHITE concurred on the ground of *stare decisis.*